

No. 100

UNITED CONSTRUCTION WORKERS AFFILIATED WITH THE UNITED MINE WORKERS OF AMERICA; DISTRICT 50, UNITED MINE WORKERS OF AMERICA; AND UNITED MINE WORKERS OF AMERICA,

Petitioners,

v.

LABURNUM CONSTRUCTION CORPORATION,

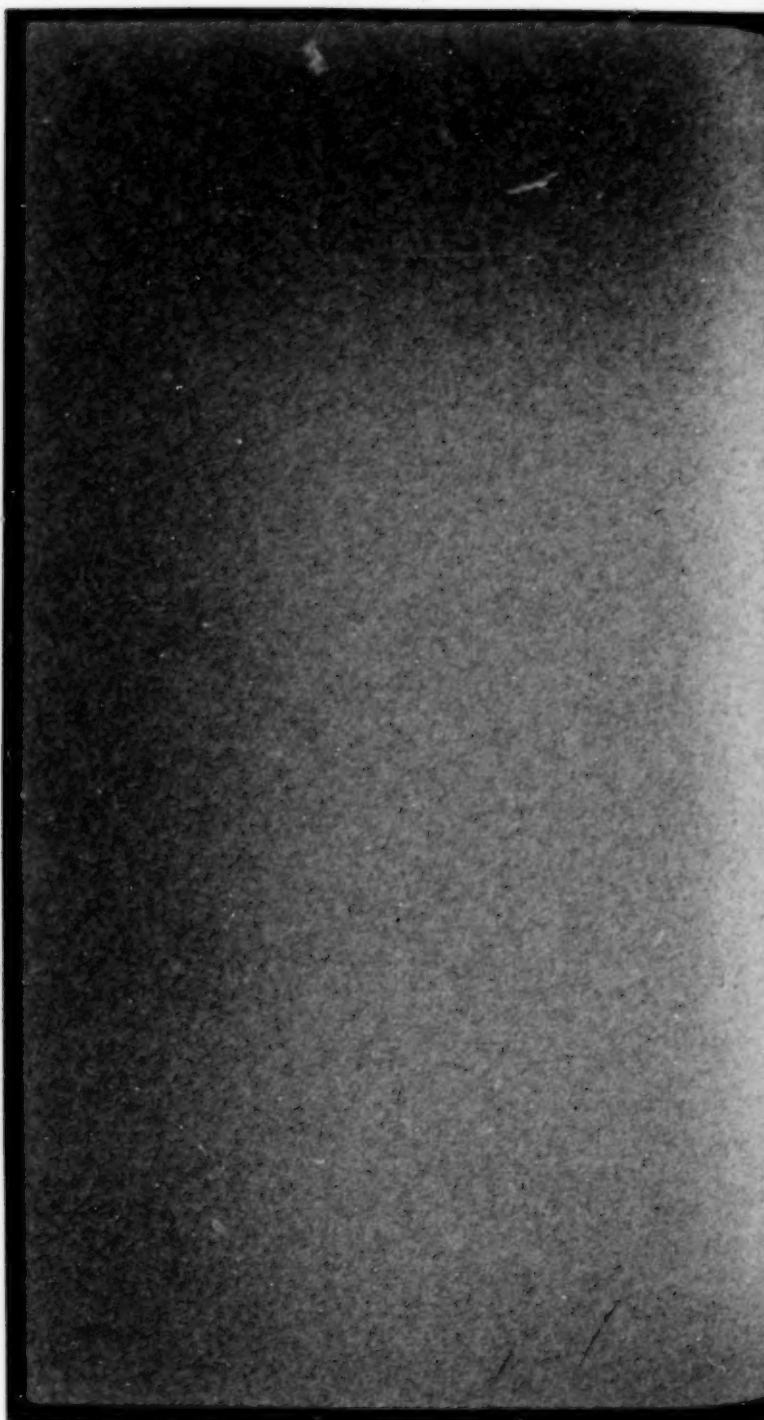
Respondent.

On Writ of Certiorari to the Supreme Court of
Appeals of Virginia

BRIEF OF RESPONDENT

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BLEED THROUGH

TABLE OF CONTENTS

	<i>Page</i>
OPINION BELOW	1
JURISDICTION	1
QUESTION PRESENTED	2
STATUTE INVOLVED	2
STATEMENT	2
SUMMARY OF ARGUMENT	11
ARGUMENT	14
I. The Wrong Under Review Is Not an Unfair Labor Practice Within the Meaning of Section 8 (b) (1) (A)	14
II. The Labor Management Relations Act of 1947 Does Not Pre- clude the Exercise of State Jurisdiction to Hear and Determine Issues in a Common Law Tort Action Involving Violence and Coercion	18
A. The State Will Not Be Deprived of Its Traditional Juris- diction Unless the Intent of Congress Is Clear	18
1. The Labor Management Relations Act of 1947 Does Not in Terms Preclude the Exercise of State Jurisdiction	20
2. The Legislative History of the Labor Management Re- lations Act of 1947 Reveals Congressional Intent to Preserve the Exercise of State Jurisdiction Over Com- mon Law Torts	22
3. Other Extrinsic Evidentiary Factors Do Not Indicate an Intent to Preclude the Exercise of State Jurisdiction Over Torts	32
B. Redress in Damages for Tortious Conduct Does Not Con- flict With Federal Labor Policy	36
C. Other Presumptions of Statutory Interpretation Favor the Retention of Common Law Jurisdiction by the States	38
D. All Authorities Support the Retention of State Jurisdiction Over Torts	41

	<i>Page</i>
1. The Commentators Support State Jurisdiction	41
2. The Decided Cases Hold That the States Retain Jurisdiction Over Common Law Torts	43
E. Choice of Consequences Favors the Decision Below	46
CONCLUSION	47
APPENDIX A	App. 1
APPENDIX B	App. 4
APPENDIX C	App. 7

TABLE OF CITATIONS

Cases

Agwalines, Inc. v. N. L. R. B., 87 F. (2d) 146 (CCA 5th, 1936)	23
Algoma Plywood Co. v. W. E. R. B., 336 U. S. 312 (1949)	33, 36
Allen-Bradley Local v. W. E. R. B., 315 U. S. 740 (1940)	18, 19, 33, 36
Amalgamated Ass'n. v. W. E. R. B., 340 U. S. 383 (1951)	20, 35, 36
Angle v. Chicago & St. Paul, etc. Railway, 151 U. S. 1 (1893)	39
Art Steel Co. v. Velasquez, 280 App. Div. 76, 111 N. Y. S. (2d) 198 (1952)	45
Auto Workers v. O'Brien, 339 U. S. 454 (1950)	20, 35
Bank of Columbia v. Okley, 4 Wheat 235 (1819)	40
Barile v. Fisher, 197 Misc. 493, 94 N. Y. S. (2d) 346 (Sup. Ct., 1949)	43, 44
Bethlehem Steel Co. v. New York Board, 330 U. S. 767 (1947)	20, 34, 35
Den v. The Hoboken Land and Improvement Company, 18 How. 272 (1855)	40
Eastman v. County of Clackamas, 32 Fed. 24 (1887)	40
Erwin Mills v. TWUA, 235 N. C. 107, 68 S. E. (2d) 813 (1952) ..	45
Garner v. Teamsters Union, 346 U. S. 485 (1953)	13, 20, 33, 34, 47
Gibbes v. Zimmerman, 290 U. S. 326 (1933)	40

	<i>Page</i>
Grist v. Textile Workers Union, R. I., 82 A. (2d) 402 (1951)	46
Hill v. Florida, 325 U. S. 538 (1945)	20, 34
Hines v. Davidowitz, 312 U. S. 52 (1940)	34
Hurtado v. California, 110 U. S. 516 (1884)	40
In re Opinion of Justices, 211 Mass. 618, 98 N. E. 337 (1912)	40
International Moulders v. Texas Foundries, 241 S. W. (2d) 213 (Tex. Civ. Apps. 1951)	46
International Union v. W. E. R. B., 336 U. S. 245 (1949) 19, 20, 33, 36, 37	37
Isbrandtsen Co. v. Johnson, 343 U. S. 779 (1952)	38
Kuzma v. Millinery Workers Union Local No. 24, 27 N. J. Super. 579, 99 A. (2d) 833 (1953)	44, 45
La Crosse Telephone Corp. v. W. E. R. B., 336 U. S. 18 (1949) 20, 35	35
Lodge Mfg. Co. v. Gilbert, Tenn., 260 S. W. (2d) 154 (1953)	45
Ludwig v. Johnson, 243 Ky. 533, 49 S. W. (2d) 347 (1932)	40
Marbury v. Madison, 1 Cranch 137 (1803)	40
Missouri v. Thatch, 361 Mo. 190, 234 S. W. (2d) 1 (1950)	46
Munn v. Illinois, 4 Otto 113 (1876)	40
North Carolina v. Vanderford, 35 Fed. 282 (1888)	40
Plankinton Packing Co. v. W. E. R. B., 338 U. S. 953 (1950) ..	20, 35
Rice & Holman v. United Electrical Radio & Machine Workers, 3 N. J. S. 288, 65 A. (2d) 638 (1949)	46
Rice v. Santa Fe Elevator Corp., 331 U. S. 218 (1947)	32, 33
Robertson v. Baldwin, 165 U. S. 275 (1897)	40
Russell v. International Union, Ala., 64 So. (2d) 384 (1953)	45
Dred Scott v. Sandford, 19 How. 393 (1856)	40
Screven County v. Brier Creek Hunting and Fishing Club, 202 F. (2d) 369 (CCA 5th, 1953)	40

	<i>Page</i>
Southern Bus Lines, Inc. v. Amalgamated Ass'n., 205 Miss. 354, 38 So. (2d) 765 (1949)	46
United Construction Workers, et als. v. Laburnum Construction Corporation, 194 Va. 872, 75 S. E. (2d) 694 (1953)	1
United Mineral & Chemical Corp. v. Katz, 33 L. R. R. M. 2453 (U. S. D. C. E. D. N. Y. 1954)	45
Williams v. Cedartown Textiles, Inc., 208 Ga. 659, 68 S. E. (2d) 705 (1952)	46
Wortex Mills, Inc. v. Textile Workers Union, 369 Pa. 359, 85 A. (2d) 851 (1952)	46

Statutes and Other Authorities

12 American Jurisprudence	39
Constitution of the United States	39
16 Corpus Juris Secundum	39
64 Harvard Law Review 211	42, 43
Legislative History of the LMRA, 1947 :	
Page 292	29
Page 556	30, 31
Page 1005	23
Page 1018	26, 27
Page 1019	27
Page 1021	27, 28
Page 1026	28
Page 1031	29
Page 1217	29
Page 1512	30
Page 1522	30
Report No. 105	25, 26
Report No. 510	30, 31
3 Labor Law Journal 761-2	41, 42
Labor Management Relations Act, 1947	11, 12, 13, 14, 15, 16, 18 19, 20, 21, 22, 24, 25, 26, 31, 32
National Labor Relations Act	22, 23
28 USC, Section 1257(3)	1

Supreme Court of the United States

October Term, 1953

No. 188

UNITED CONSTRUCTION WORKERS, AFFILIATED WITH THE UNITED MINE WORKERS OF AMERICA; DISTRICT 50, UNITED MINE WORKERS OF AMERICA; AND UNITED MINE WORKERS OF AMERICA,

Petitioners,

v.

LABURNUM CONSTRUCTION CORPORATION,

Respondent.

**On Writ of Certiorari to the Supreme Court of
Appeals of Virginia**

BRIEF OF RESPONDENT

OPINION BELOW

The opinion of the Supreme Court of Appeals of Virginia (R. 1945, *et seq.*) is reported at 194 Va. 872.

JURISDICTION

The Jurisdiction of this Court is claimed by Petitioners under 28 U. S. C., Section 1257 (3). The petition for writ of certiorari was granted on January 18, 1954.

QUESTION PRESENTED

In the order allowing certiorari this Court limited the issue to the following question:

"In view of the type of conduct found by the Supreme Court of Appeals of Virginia to have been carried out by Petitioners, does the National Labor Relations Board have exclusive jurisdiction over the subject matter so as to preclude the State court from hearing and determining the issues in a common law tort action based upon this conduct."?

STATUTE INVOLVED

The exclusiveness of the jurisdiction of the National Labor Relations Board must be found, if at all, in the provisions of the Labor Management Relations Act of 1947.¹ That Act is Public Law 101, 80th Congress, H. R. 3020.

STATEMENT

Laburnum Construction Corporation (hereinafter sometimes called *Laburnum* or *Plaintiff*) filed its Notice of Motion for Judgment in the Circuit Court of the City of Richmond, Virginia, on November 16, 1949.

The action is a common law action in tort where the Notice of Motion for Judgment (R. 2-12) charges Petitioners with commission of acts of force and violence, "all of which said actions were wilful, malicious, illegal and unwarranted and were intended to and did actually greatly damage and injure the Plaintiff's (sic) in and about its property and reputation and caused Plaintiff's work * * * to be stopped and its * * * contracts to be cancelled * * *" and further caused Plaintiff to lose other contracts for work

¹ Provisions of this Act pertinent here are printed in Appendix A.

which would have resulted in large profits to Plaintiff (R. 11-12).

The Notice of Motion for Judgment further charges that the acts committed were done "for the purpose of wilfully, maliciously and unlawfully attempting to destroy Plaintiff's business, and to prevent Plaintiff from further continuing lawfully to work within the State of Kentucky unless and until Plaintiff submitted to their demands * * *." (R. 12).

The Notice of Motion for Judgment does not mention the Labor Management Relations Act of 1947, and no claim was ever made by Plaintiff that the acts complained of were unlawful under that statute or that recovery should be based in any way on that statute.

Each of the defendants filed a plea of not guilty and grounds of defense denying all material allegations of the Notice of Motion for Judgment.

The grounds of defense which were filed on October 24, 1950, nearly a year after the Notice of Motion for Judgment was filed, allege (R. 80) :

"Second Defense

The supposed cause of action arose in Kentucky and the substantive law governing the case is the law of Kentucky. The provisions of the Kentucky Revised Statutes of 1948 (4th Biennial Edition) § 336.130 give the right to strike, the right to engage in peaceful picketing, and the right to assemble collectively for peaceful purposes."

The case was tried before a jury, beginning January 22, 1951, and in the course of the trial Petitioners denied the allegations against them, and presented their theory of the case and their evidence to support their theory. The Trial Court instructed the jury in a manner which fully protected

every legitimate right of Petitioners to organize employees, to strike, to assemble peaceably and to picket (R. 129-146); See Instructions Nos. 1-A, C, D, E, F-1, O-2, and P set forth in Appendix B.

The jury rejected all defenses of Petitioners and found against them upon every material issue in the case. The verdict was for Laburnum in the amount \$275,437.19; \$175,437.19 compensatory damages and \$100,000.00 punitive damages.

Thus, it has been determined that no legitimate labor activity was involved, and that Petitioners committed the acts charged against them, and committed those acts maliciously, intentionally, wilfully, and without regard to the rights of Laburnum, its officers, its employees or anyone else.

The verdict of the jury has been reviewed and approved by the Trial Court upon motion of Petitioners to set aside the verdict and grant Petitioners a new trial upon the ground that the verdict is unsupported by the evidence.

The verdict of the jury and the judgment of the Trial Court have likewise been reviewed and approved by the Supreme Court of Appeals of Virginia, except as to some items of compensatory damages.

Otherwise the verdict of the jury and the judgment of the Trial Court have been sustained as amply supported by the law and the evidence, and whatever may be the theory of Petitioners in this case, the facts have been found against them. But Petitioners ignore the findings of fact against them, and in their statement of the case in their brief they seek to evade the consequences of those findings. They speak as if they had won the jury verdict, when actually the reverse is true. They can only have their case reviewed now upon the basis of the facts already determined.

Petitioners for the first time raised the issue whether the National Labor Management Relations Act of 1947 had

deprived the Trial Court of jurisdiction to try the case more than two months after the jury's verdict and nearly a year and a half after the case was begun.²

The Supreme Court of Appeals of Virginia correctly rejected the belated plea to the jurisdiction. It is now the only subject of this review. The facts bearing upon the issue are voluminous but simple.

Laburnum, a Virginia corporation, secured contracts to construct various projects in Breathitt County, Kentucky, for certain coal producing companies. Laburnum proceeded to Kentucky and began to perform its contracts. While work under these contracts was in progress the events occurred which led to this litigation. Those events are described in the opinion of the Supreme Court of Appeals of Virginia, which understates the facts which actually transpired, the threats which were actually made and the violence which actually occurred.

The facts as stated by the Supreme Court of Appeals of Virginia, so far as relevant here, are as follows:

"Laburnum proceeded with its work on these several projects without trouble until July 14, 1949, when William O. Hart, speaking from Pikeville, Kentucky, telephoned Bryan³ who was in Richmond. According to the testimony of Bryan, which was accepted by the jury, Hart identified himself as a 'field representative of the United Construction Workers and District 50 of the United Mine Workers of America,' working under David Hunter, 'Regional Director of Region 58

²The cause of action arose during the summer of 1949, and this action was initiated on November 16, 1949. Trial before a jury began on January 22, 1951, and the jury returned its verdict on February 17, 1951. During all that time, Petitioners were represented by competent counsel, and yet they did not raise the present question until April 30, 1951.

³A. Hamilton Bryan, President of Laburnum.

of United Construction workers and District 50,' with headquarters in Pikeville. Hart told Bryan that he was familiar with the work which Laburnum was doing and about to do in Breathitt county, that the plaintiff was 'working in United Mine Workers territory,' and that he (Hart) would close down this work unless the plaintiff recognized the United Construction Workers in the employment of its workers. Bryan told Hart of Laburnum's agreement with the American Federation of Labor affiliate at Richmond, under which it was to employ members of that union, and that consequently it would not be able to comply with Hart's demand and make an agreement with the United Construction Workers. Hart replied that he was going 'to take over' the plaintiff's work, that he intended to 'organize' all of its workers, 'including the carpenters, electricians, pipefitters, ironworkers, millwrights, laborers, and everybody else,' and that if the plaintiff failed to make an agreement 'recognizing the United Construction Workers, he (Hart) would close down' all of the plaintiff's work in Breathitt County, as had been done in other instances within his (Hart's) territory. (R. 1952)

"According to Bryan, during this conversation Hart said nothing as to any of Laburnum's laborers being dissatisfied with their wages or working conditions, but based his statements on the fact that Laburnum was working in United Mine Workers' territory and must recognize the United Construction Workers, the latter's affiliate. Just before concluding this telephone conversation Bryan requested Hart to communicate with him before he took any other steps, and Hart agreed to do so. (R. 1952-3)

"Bryan immediately telephoned Cecil M. Delinger, his superintendent at the Kentucky job site, about his conversation with Hart. Delinger told Bryan that he knew nothing of any labor trouble, or any threatened complaints. (R. 1953)

"On Monday, July 25, about 7:30 p. m., Delinger

telephoned Bryan that he had been informed that on the next day, at noon, the United Construction Workers were coming to the job site with a large group of men, that they would be armed, and would stop the plaintiff's employees from working on the projects. (R. 1953)

"It was then too late for Bryan to catch a train for arrival at the job site by noon the next day, so with one of his employees he set out for Kentucky that night in a company truck, reaching Huntington, West Virginia, about 7:00 a. m. on Tuesday July 26. Bryan then undertook to call Hart at Pikeville, Kentucky, and was informed that he was not there but that he might speak to Hart's 'boss', David Hunter, regional director of District 50 United Mine Workers of America, and regional director of United Construction Workers. Bryan requested Hunter to direct Hart not to interfere with the plaintiff's workmen before Bryan had an opportunity to talk with Hart at the job site. Hunter stated that he would try to get the message to Hart. (R. 1953)

"Having been delayed by trouble with his truck Bryan did not reach the job site until about 3:00 p. m. on the same day. When he arrived there he found that all work on the several projects in which his men were engaged had stopped. It developed that about noon on that day Hart had arrived at the job site accompanied by a crowd variously estimated at from 40 to 150 men. There is evidence that this was 'a very rough, boisterous crowd,' that some of the men used abusive language, that some were drunk, and that some carried guns and knives. (R. 1953)

"There is evidence on behalf of the plaintiff that when Hart and his men reached the 'schoolhouse site' upon which some of the plaintiff's skilled laborers were working, Hart demanded that these workmen join the United Construction Workers. When several of the Laburnum workers informed Hart that they were members of the American Federation of Labor, Hart replied, 'God damn you, if you work here you are going

to join the United Construction,' or else we will kick you out of here.' (R. 1953-4)

"Hart and his men then went to the coal preparation plant and told the Laburnum workers there that he was taking over the job and that the Laburnum workers would have to 'join up with the United Construction Workers.' He accosted other employees of the plaintiff at another site where he repeated his threats that he would 'take over' the job unless they joined the union which he represented. Some of the plaintiff's employees yielded to these threats and agreed to join Hart's labor organization, while others refused to do so. (R. 1954)

"It is true that Hart's version of these incidents is quite different. He denied that he undertook to coerce the plaintiff's employees into joining his union, or that he told them that they could not work unless they did so. In short, his story is that he went to the job site for the purpose of organizing the unskilled laborers who were unorganized and not members of any union, and to 'represent' other employees of the plaintiff who were dissatisfied with their wages and working conditions. He related that some of the plaintiff's employees, including both the skilled and unskilled laborers, voluntarily signed up with the United Construction Workers. (R. 1954)

"The verdict of the jury has, of course, resolved this conflict in favor of the plaintiff. (R. 1954)

"When Bryan arrived at the job site and was informed of what had happened, he talked to Hart and reminded him of their telephone conversation of July 14, when Hart had promised to let Bryan hear from him before he undertook to stop the work. Hart denied that he had any such understanding and repeated to Bryan that the latter was in United Mine Workers' territory, that he (Hart) was 'taking over' for the United Construction Workers regardless of the fact that the majority of the Laburnum employees were members of the American Federation of Labor, or had made application to join it. (R. 1954-5)

"According to Bryan, Hart further admitted that he had received Bryan's message sent through David Hunter that morning, but asserted that he 'had already made all his plans and arrangements and couldn't stop them.' He boasted to Bryan, 'I bet you \$500 right now that you will never finish your job unless you use United Construction Workers' men,' adding, 'Nobody has ever been able to buck the United Mine Workers yet, and you can't do it either.' (R. 1955)

"There is ample evidence to support the finding that because of the insolent and abusive language and threats of Hart and those accompanying him, the Laburnum employees, who were greatly outnumbered, were intimidated and afraid to proceed with their work. (R. 1955)

"Bryan talked with Hart again at the job site on August 1, and, as he says, Hart 'left no doubt in anybody's mind that he was going to have people to stop any men from working who tried.' 'He continually threatened to bring a large crowd of people there from Beaver Creek and other places to stop us from working if any of our people went to work. * * *' (R. 1955)

* * *

"* * * According to the evidence of the plaintiff's witnesses, this was no peaceful labor dispute in which the agents of the defendants were merely attempting to organize or persuade a few unskilled laborers to join the union. On the contrary, there is ample evidence that it was the willful and avowed purpose of defendants' agents to prevent the plaintiff's employees from proceeding with their work unless these employees joined the United Construction Workers, one of the defendant unions, and that such purpose was evinced by words and conduct so violent and abusive as to put these employees in fear for their lives and safety. Yielding to these threats the plaintiff's employees refrained from continuing with their work, with the result that plaintiff's business relationship with its customers was disrupted and destroyed, to its considerable damage." (R. 1966-7)

From the foregoing statement of facts it is obvious that Laburnum's employees were "run off the job" and Laburnum was "run out of Kentucky."

In their brief Petitioners state repeatedly that Laburnum should have settled this matter by means of the "peaceful procedures" provided by the Labor Management Relations Act of 1947;⁴ but if that Act was applicable, why did not Petitioners, who now insist that Laburnum should have used the peaceful procedures of the Act, utilize those procedures to establish themselves as the collective bargaining agency? A chief purpose of that Act is to establish procedures to determine questions of representation. The answer is plain. The purposes of Petitioners were not legitimate, and the argument of their counsel now is not legally sound. Petitioners' contention really is that the laws of the various states and of the United States are for everyone to obey and follow — except the United Mine Workers and its affiliates.

Petitioners stand before this Court convicted of having maliciously and wantonly organized a band of men, armed with guns and knives, with whom they set upon a smaller group of unarmed men in a remote and inaccessible place, and drove them and their employer from their work by actual and overwhelming threats of physical force upon the ground that certain territory was "United Mine Worker territory" where men cannot work unless they contract with or join the United Mine Workers.

Because Petitioners call themselves a "labor organization", they argue that the Federal government has freed them from all liability for actions which impose liability upon all others. According to Petitioners, all that can happen to them is a cease and desist order from the National

⁴Laburnum did no unpeaceful act. The implications in Petitioners' brief that Laburnum failed to use "peaceful procedures" are completely unwarranted.

Labor Relations Board directing them to refrain from similar actions hereafter.

If Petitioners are correct in their argument, people are at the mercy of the United Mine Workers of America and its affiliates in large areas of our country.⁵

To adopt the "goon" synonym of Petitioners in their brief, the proposition for decision here is whether the Congress of the United States has, in effect, licensed "goon squads" to maraud the countryside with practical immunity from sanctions applied to all other citizens.

Common sense dictates that no American legislative body ever could have approved any such proposition.

SUMMARY OF ARGUMENT

I.

The employees of Laburnum were coerced to join Petitioners and unite in Petitioners' activities. Assuming that Petitioners violated section 8 (b) (1) (A)⁶ with respect to Laburnum's employees, the National Labor Relations Board (hereinafter called the Board) might have remedied in part the wrong done those employees.

But the present action was not brought to vindicate the rights of the employees nor to protect any public interest in such rights. That the employees may also have been wronged is incidental to the present action. The acts of Petitioners went far beyond the scope of section 8 (b) (1) (A).

The subject of this proceeding is not the wrong to the employees, but the right of a company to conduct its business

⁵ To corroborate this statement read "The Reign of Terror at Widen, W. Va." in the February 20, 1954, issue of *The Saturday Evening Post*. (Appendix C)

⁶ Section 8 (b) (1) (A) of the National Labor Relations Act. The National Labor Relations Act (hereinafter sometimes called the Act) is Section 101 of the Labor Management Relations Act of 1947.

in a peaceful manner free from violence and unlawful interference.

The Labor Management Relations Act of 1947 is not concerned with this right and therefore cannot be said to have eliminated it.

II.

Even if Petitioners' acts were unfair labor practices within the intendment of section 8 (b) (1) (A) as to Laburnum's employees, they were not unfair labor practices as to Laburnum, the only plaintiff in this case. The rights of Laburnum are not within the intent or the language of the Act and the states are free to apply their own remedy for the damages caused by Petitioners. The acts of which Petitioners are guilty are unlawful in every state in the Union and the common law has always provided a remedy for such acts.

In the face of these undoubted and unassailable facts, Petitioners urge here that the Congress is presumed to have deprived the states of traditional authority over such activities by the mere passage of an act without manifestation of intent to do so.

The Act has no words expressing an intent to oust the traditional jurisdiction of the states. To the contrary, legislative history of the Act indicates an intent that the States shall retain jurisdiction over violent conduct.

There is no conflict between a state's remedy for a completed tort and the Board's prevention of future unfair labor practices and in the absence of conflict, the Court will not infer that a state's traditional jurisdiction has been impaired.

The presumptions of statutory interpretation favor affirmance of the judgment below. Not only is it presumed, under

the circumstances present here, that the Congress has not disturbed traditional state jurisdiction, it is also presumed that the Act has not derogated the common law. The latter presumption is especially operative here because it is, at least, doubtful that the Congress has the power to eliminate the common law right of remedy for tort. Particularly, this is so since the Congress did not even discuss such a result in connection with section 8 (b) (1) (A).

The choice of consequences also favors affirmance of the judgment below. Affirmance means that the peaceful and orderly procedures of the Board will more likely be followed. Reversal will sanction disregard of the procedures established for the purpose of resolving questions of representation of employees, and will encourage indulgence in the use of unlawful force.

This choice of consequences was recognized by this Court in the recent case of *Garner v. Teamsters Union*, 346 U. S. 485 (1953), which involved peaceful union activity. The Court was careful to distinguish that situation from a case of unlawful and tortious conduct when it stated (p. 448):

“Nor is this a case of mass picketing, threatening of employees, obstructing streets and highways, or picketing homes.”

Laburnum is the case of mass force, threatening of employees, and indeed torts of a larger and more shocking scope. It lies within the field of “historic powers” which the *Garner* case holds the several states exercise for the protection of their citizens.

All authorities support the retention of state jurisdiction over common law torts.

Thus, by all established criteria the judgment below should be affirmed.

ARGUMENT

I.

The Wrong Under Review Is Not an Unfair Labor Practice Within the Meaning of Section 8 (b) (1) (A)

Petitioners determined that Laburnum was either going to contract with them or they were going to drive Laburnum out of Kentucky. When Laburnum did not promptly contract with them, Petitioners organized a gang of men, led them to Laburnum's job site, and with a show of overwhelming force "shut down" the job, intimidated *all* Laburnum's employees and "ran" them off the job with the threat that if Laburnum did any more work Petitioners would be back with as many men as might be necessary to prevent further work. Thereafter Petitioners informed Laburnum that they would do the same thing if Laburnum tried to work anywhere else in their "territory." They succeeded in preventing Laburnum from doing any further work and Laburnum lost its contracts for work and was thereby damaged.

Laburnum brought this action in tort to recover compensatory and punitive damages. Petitioners pleaded not guilty and asserted that the substantive law of Kentucky governed the case. See grounds of Defense, Second Defense (R. 80) and Jury Instruction A, requested by Petitioners (R. 137). Petitioners also pleaded their right to picket and their right to assemble peacefully, and the jury was instructed so as to insure to Petitioners all their lawful rights (See Jury Instructions, Appendix B). The jury's verdict forecloses any argument that Petitioners acted peacefully.

Petitioners now contend that the wrongs they committed involved unfair labor practices within the meaning of Section 8 (b) (1) (A) of the Act and that such wrongs are

therefore remediable, if at all, only through the processes of the National Labor Relations Board.

Section 8 (b) (1) (A) provides that "it shall be an unfair labor practice for a labor organization or its agents * * * to restrain or coerce * * * *employees* in the exercise of the rights guaranteed in Section 7." The rights guaranteed in Section 7 are the rights to form or join a labor organization and to engage in concerted activities or to refrain therefrom. The National Labor Relations Board is empowered by Section 10 (a) of the Act "to *prevent* any person from engaging in any unfair labor practice (listed in Section 8) affecting commerce."

Thus, Section 8 (b) (1) (A) proscribes only restraint and coercion of *employees* in the exercise of *their* rights and the Board is empowered *only* to *prevent* restraint and coercion of *employees*.

The present action was not brought to vindicate the right of *employees*, nor does it concern the right of *employees*. This action concerns only the right of an *employer* to do business free from violence and coercion. The action is for damages resulting to the *employer* because the *employer* was made to go out of business by physical force. That is simply a tort and an offense with which Section 8 (b) (1) (A) is not concerned.

There is no mention in the Labor Management Relations Act of 1947 of an employer's right to engage in business free from violence. There is no mention of the right of an employer to engage in his business free from threats, assault and battery, libel, slander, larceny and highway robbery. Plainly the Labor Management Relations Act of 1947 is not concerned with these matters, at least insofar as they affect persons who are *not employees*.

Here Petitioners, according to the evidence, by their own

fiat, have staked out territory in which they decide who, whether he be employer or employee, will do business or work, and who will not do business or work. They enforce their decisions by force of arms.

While some of the physical force was directed toward Laburnum's "employees", it was by no means limited to them, and it was intended to and did stop Laburnum.

On July 27, 1949, a message was delivered to C. M. Delinger, Laburnum's Construction Superintendent,⁷ that if he "wanted to get out of Kentucky alive and in good health, to get the hell out of there before Sunday; not to go back in Breathitt County after Sunday" (R. 1029). Delinger left the job and Kentucky on Friday, the 28th, and has never been back (R. 1030-1031). Delinger had no rights under the Act.

Bryan was threatened on July 27, 1949, when he went to the job site (R. 851, 964). The testimony being (and it was never denied) that the "spotters" left there by Petitioners threatened:

"If you go to work, in an hour there will be a hundred men here and they will fish you out of that pond out there, and that damned squirt there with that straw hat on (Bryan) will be the first one to get in" (R. 851);

and again,

"If that fellow out yonder with the straw hat on (Bryan) and that big-bellied son-of-a-bitch (Delinger) comes out here he will be picked out of that pond here and he won't walk out." (R. 964)

⁷ The Act limits the meaning of employee as follows: "The term 'employee' shall not include . . . any individual employed as a Supervisor." (Sec. 2 (3)).

Hart, the union organizer who led the assault on Laburnum's job site, put the whole thing in a nutshell on July 26, 1949, the day of the assault, when he told Bryan :

"I bet you \$500 right now that you will never finish your job unless you use United Construction Workers men" (R. 561) ;

and,

"Nobody has ever been able to buck the United Mine Workers yet, and you can't do it, either." (R. 562)

Thus it appears that whatever may have been the underlying objective of Petitioners, they did in fact take the law into their own hands. And in doing so they went far beyond the confines of Section 8 (b) (1) (A) ; far beyond the limits of labor relations ; and deeply into the realm of gangsterism. What they did was far more than a violation of 8 (b) (1) (A).

With respect to Laburnum's employees Petitioners may technically have committed an unfair labor practice for which the National Labor Relations Board might have been able to afford some redress, but the wrong to the employees was only incidental to the larger wrong inflicted upon Laburnum. Had the threat to Delinger been carried out, would the Court hold that because the ultimate objective of Petitioners was to coerce Laburnum's employees, Delinger's widow could not recover damages? Or that the perpetrators could not be punished under state law? Obviously not.

The wrong for which Laburnum sought redress was not the incidental wrong to its employees. It was the larger wrong done to Laburnum by physically forcing it to stop doing business in Kentucky through acts directed not only against its "employees" but against all who worked for it.

II.

The Labor Management Relations Act of 1947 Does Not Preclude the Exercise of State Jurisdiction to Hear and Determine Issues in a Common Law Tort Action Involving Violence and Coercion.

A.

THE STATE WILL NOT BE DEPRIVED OF ITS TRADITIONAL JURISDICTION UNLESS THE INTENT OF CONGRESS IS CLEAR.

The question for decision, assuming the acts of Petitioners were unfair labor practices, is whether by the mere inclusion of Section 8 (b) (1) (A) in the National Labor Relations Act the Congress has ousted the states of traditional jurisdiction over torts.

It is already established by the decisions of this Court that the subject matter of this action lies well within the sphere of traditional state jurisdiction. The Court has said in *Allen-Bradley Local v. W. E. R. B.*, 315 U. S. 740, 749 (1940), in which violence was involved and in which the claim of preemption was made:

"We will not lightly infer that Congress by the mere passage of a federal Act has impaired the traditional sovereignty of the several states in that regard."

Allen-Bradley was decided before Section 8 (b) (1) (A) was enacted, but the decision made it plain that acts of physical force and violence are traditionally the concern of the states. In that case the Court upheld an order of the Wisconsin Employment Relations Board directing a union to cease and desist from mass picketing and other similar practices. The Court said (p. 750-1):

"Nor is the freedom to engage in such conduct shown to be so essential or intimately related to a realization of the guarantees of the federal Act that its denial is an impairment of the federal policy. If the order of the state Board affected the status of the employees or if it caused a forfeiture of collective bargaining rights, a distinctly different question would arise. But since no such right is affected, we conclude that this case is not basically different from the common situation where a state takes steps to prevent breaches of the peace in connection with labor disputes. Since the state system of regulation, as construed and applied here, can be reconciled with the federal Act and since the two as focused in this case can consistently stand together, the order of the state Board must be sustained under the rule which has long obtained in this Court. See *Sinnot v. Davenport*, 22 How. (US) 227, 243, 16 L. ed. 243, 247.

"In sum, we cannot say that the mere enactment of the National Labor Relations Act without more excluded state regulation of the type which Wisconsin has exercised in this case. It has not been shown that any employee was deprived of rights protected or granted by the federal Act or that the status of any of them under the federal Act was impaired."

Thus, on the basis of *Allen-Bradley* it is plain that the National Labor Relations Act did not preclude state jurisdiction over tortious conduct before the enactment of Section 8 (b) (1) (A). Since the enactment of Section 8 (b) (1) (A) this Court has considered the matter of exclusion of states from the exercise of their traditional jurisdiction and has said the Congressional intent to do so must be clearly manifest.

Thus, in *International Union v. W. E. R. B.*, 336 U. S. 245 (1949), this Court said (p. 252):

"However, as to coercive tactics in labor controversies, we have said of the National Labor Relations Act what is equally true of the Labor Management Relations Act of 1947, that 'Congress designedly left open an area for state control' and that the 'intention of Congress to exclude states from exercising their police power must be clearly manifested.' "

That the Congress did not intend to oust the states of their traditional jurisdiction over tortious conduct by the enactment of Section 8 (b) (1) (A) is a fact plainly apparent from all applicable criteria of Congressional purpose.

1.

The Labor Management Relations Act of 1947 Does Not in Terms Preclude the Exercise of State Jurisdiction

There is no language in the Labor Management Relations Act of 1947 expressly stating that the states have been deprived of any jurisdiction whatsoever. It is true that the necessities of different situations have compelled the conclusion that in some areas state action is precluded. But such exclusion has always been by necessary inference or implication, never on the ground that the exclusion was express.⁸ This point was expressly stated in *International Union v. W. E. R. B.*, 336 U. S. 245 (1949), at page 252:

"Congress has not seen fit in either of these Acts (Wagner and Labor Management Relations Act of 1947) to declare either a general policy or to state spe-

⁸ Compare *Hill v. Florida*, 325 U. S. 538 (1945); *Bethlehem Steel Co. v. New York Board*, 330 U. S. 767 (1947); *La Crosse Telephone Corp. v. W. E. R. B.*, 336 U. S. 18 (1949); *Plankinton Packing Co. v. W. E. R. B.*, 338 U. S. 953 (1950); *Auto Workers v. O'Brien*, 339 U. S. 454 (1950); *Amalgamated Ass'n v. W. E. R. B.*, 340 U. S. 383 (1951); *Garner v. Teamsters*, 346 U. S. 485 (1953).

cific rules as to their effects on state regulation of various phases of labor relations over which the several states traditionally have exercised control."

Employees are given certain rights by Section 7 of the Act—namely the right to form, join or assist labor organizations, to bargain collectively and to engage in concerted activities, and the corollary right to refrain from so doing. Section 8 (b) (1) (A) provides merely that it shall be an unfair labor practice for a labor organization or its agents to restrain or coerce employees in the rights guaranteed them under Section 7. The Act establishes the National Labor Relations Board and in Section 10 (a) empowers the Board to *prevent* unfair labor practices.

Section 10 (a) provides:

"(a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise. . . ."

It is significant to note here that Section 10 (a) merely gives the National Labor Relations Board power to *prevent* unfair labor practices listed in Section 8. After appropriate findings of fact, the Board is directed to issue a cease and desist order (Section 10 (c)).

Significantly also the Act does not say that only the Board may adjudicate in situations which contain elements of unfair labor practices.

Thus, the Act does not expressly deprive states or state courts of their traditional jurisdiction over common law torts; and Petitioners admit this to be the fact (Brief 36).

2.

The Legislative History of the Labor Management Relations Act of 1947 Reveals Congressional Intent to Preserve the Exercise of State Jurisdiction Over Common Law Torts.

The legislative history of the Labor Management Relations Act of 1947 reveals no intent on the part of Congress to eliminate from state jurisdiction the field of torts and remedies for the commission of torts. To the contrary, the legislative purpose was plainly to supplement the law of torts in the states, *not* to eliminate it.

The Wagner Act (The original National Labor Relations Act) was passed in 1935. The statutory scheme of the Wagner Act for the prevention of unfair labor practices, was substantially that which obtains under the Labor Management Relations Act of 1947.⁹

The Wagner Act declared it to be the policy of the United States to encourage and foster organization of employees and collective bargaining in industries affecting interstate commerce. To that end the Wagner Act endowed employees with the right to form, join and assist labor organizations, and to engage in concerted activities (Section 7). To implement the right thereby granted that Act made unlawful (Section 8) certain activities of employers which were declared to be unfair labor practices.

One of five unfair labor practices was (Section 8 (1)) "to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7. The Wagner Act then empowered the National Labor Relations Board (which it created) to prevent the unfair labor practices enumerated (Section 10 (a)).

⁹As previously noted the National Labor Relations Act was re-enacted as a part of the Labor Management Relations Act of 1947.

Under the Wagner Act the prevention of unfair labor practices was exclusive. Thus Section 10 (a) provided:

"The Board is empowered * * * to prevent any person from engaging in any unfair labor practice * * * affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law or otherwise."

The framers of Section 10 (a) of the Wagner Act were not thinking in terms of excluding state court proceedings, for the all sufficient reason that no state court had jurisdiction at common law of the employer "unfair labor practices" which constituted the only type of conduct outlawed in that Act. The employer conduct proscribed by the Wagner Act was perfectly valid under the common law. Thus the Court said in *Agwalines, Inc. v. N. L. R. B.*, 87 F. (2d) 146, 150 (CCA 5th, 1936):

"The prohibitions against interference by employers with self-organization of employees were not only unknown, they were obnoxious to the common law."

Under the Wagner Act, labor organizations were free to commit against employees the very conduct which was proscribed as "unfair" and unlawful for employers. Since such activities were for the most part perfectly lawful under the laws of the states, there was no recourse against the labor organization which indulged in them.

The labor organizations abused the advantages which they enjoyed, or at least the Congress so thought. 93 Cong. Rec. 3950, *et seq.*, Leg. Hist. 1005, *et seq.*, and consequently Congress turned its attention to these matters in 1947, and passed the Labor Management Relations Act of 1947, which

included the National Labor Relations Act with amendments.

The right of employees to organize and engage in concerted activities which had been bestowed by Section 7 of the Wagner Act was retained intact in Section 7 of the present National Labor Relations Act, but the corollary right not to organize, not to join and not to engage in concerted activities was added. Section 8 of the Wagner Act declaring five employer unfair labor practices was retained, but was redesignated Section 8 (a), and Section 8 (b) was added, declaring similar practices by labor organizations to be unfair labor practices. Thus, under the present National Labor Relations Act, Section 8 (b) (1) (A), it is an unfair labor practice for unions to restrain or coerce employees in their rights granted under Section 7. [This is the unfair labor practice which Petitioners now claim they committed.] The Board was retained under the present Act and so was Section 10 (a), but from it the words "this power shall be exclusive" were deleted.

The legislative history of the Labor Management Relations Act of 1947 demonstrates that by the addition of Section 8 (b) (1) (A) Congress did not intend to preclude state actions in those cases in which the coercion was unlawful under state law. To the contrary, it is plain that Congress sought to outlaw those coercive acts which were not unlawful in the States.

The Senate Committee on Labor and Public Welfare held hearings on the general subject of labor legislation from January 23 to March 8, 1947. On March 6, 1947, Paul M. Herzog, who was then Chairman of the National Labor Relations Board, testified before the Committee with respect to proposed amendments to the National Labor Relations Act. His testimony included the following:

"Interference and Coercion by Unions. Section 5 (a) of S. 360 would amend Section 8 of the National Labor Relations Act to make it an unfair labor practice for a labor organization or its agents to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed by the Act. * * *

"The proposal is not a new one. It has been advanced in varying forms in the past, and the Board has on a number of occasions expressed its views to the Congress.

"The most frequent argument made for the proposal is that it is necessary in order to provide 'equal treatment' of employers and labor unions. As a matter of logic, this would not operate as a truly 'equalizing' amendment in practice. It makes unions and their agents liable twice for the same offense, once under State and once under Federal law. Employers run no such double risk for interfering with their employees' rights. True 'equality' would require that improper conduct by unions and their leaders, now already subject to local criminal law and penalties, should hereafter result only in 'cease and desist' orders by the Board as do employer unfair labor practices. *This is an equalization that no one has suggested and which we certainly do not urge.*" (Emphasis added)

The Senate Committee on Labor and Public Welfare voted 7 to 6 not to include in the bill, later introduced, the provisions of Section 8 (b) (1) (A). The bill which came from the Committee was S. 1126. It was introduced by Mr. Taft in the Senate on April 17, 1947. 93 Cong. Rec. 3753, Leg. Hist. 1000. On the same day Mr. Taft submitted to the Senate Report No. 105, 93 Cong. Rec. 1000, Leg. Hist. 1000.

Report No. 105 contained the supplemental views of Senators Taft, Ball, Donnell, Jenner and Smith, members of the Senate Committee on Labor and Public Welfare, in expla-

nation of an amendment which is now Section 8 (b) (1) (A). Report No. 105 is in part as follows:

"An amendment to make it an unfair labor practice for employees or unions to 'interfere with, or coerce, employees in the exercise of the rights guaranteed in section 7' of the National Labor Relations Act. It is now an unfair labor practice for employers to so interfere with, restrain, or coerce. Since this bill establishes the principle of unfair labor practices on the part of unions, we can see no reason whatever why they should not be subject to the same rules as the employers. The committee heard many instances of union coercion of employees such as that brought about by threats of reprisal against employees and their families in the course of organizing campaigns; also direct interference by mass picketing and other violence. *Some of these acts are illegal under State law, but we see no reason why they should not also constitute unfair labor practices to be investigated by the National Labor Relations Board, and at least deprive the violators of any protection furnished by the Wagner Act.* We believe that the freedom of the individual workman should be protected from duress by the union as well as from duress by the employer. The text of this amendment follows: On page 14, line 6, after the word 'coerce,' insert the following: '(A) employees in the exercise of the rights guaranteed in section 7; or (B)' " (Emphasis added) Leg. Hist. 456.

The Amendment which is now Section 8 (b) (1) (A) was introduced by Senator Ball on April 25, 1947, 93 Cong. Rec. 4136, Leg. Hist. 1018. Mr. Ball then spoke in behalf of his amendment and stated:

"The purpose of the amendment is simply to provide that where unions, in their organizational campaigns, indulge in practices which, if an employer indulged in

them, would be unfair labor practices, such as making threats or false promises or false statements, the unions also shall be guilty of unfair labor practices" 93 Cong. Rec. 4136, Leg. Hist. 1018.

After citing several cases Senator Ball continued :

"In all those cases if an employer had made such statements during an organization or preelection campaign, the National Labor Relations Board would have held the employer guilty of unfair practices on the ground that he was coercing employees in their free choice of a bargaining agent.

"The common practice in organization campaigns is for the business agent to threaten all employees and tell them that if they do not join the union before the election, or vote for it, they will be charged double initiation fees afterward. That is done in a great many cases. It is clearly an attempt to coerce and threaten employees in the exercise of the freedoms guaranteed by the Act. *However, such practices do not fall within the purview of State laws against violence and that sort of thing.*" (Emphasis added) 93 Cong. Rec. 4137, Leg. Hist. 1019.

Senator Ball concluded :

"I think that the adoption of the amendment offered by me, which is identical with the provision applying to employers who interfere with the freedom of employees in organizing, is essential to equalize the rights and responsibilities of both employers and unions in this field, to really assure to employees the freedom supposedly guaranteed in Section 7 of the National Labor Relations Act. * * *" 93 Cong. Rec. 4138, Leg. Hist. 1021.

Senator Ives of New York, in argument *against* the Amendment then stated :

"Moreover, assuming that these proscribed acts involve violence and physical coercion, the provision is unnecessary, because offenses of this type are punishable under State and local police law. *In fact, the enactment of this provision would make unions and their agents liable twice for the same offense, once under State and once under Federal law.* Employers run no such risk for interfering with their employees' rights." (Emphasis added) 93 Cong. Rec. 4140, Leg. Hist. 1021.

In the debate which followed Senator Taft said in support of the amendment :

"Many cases were referred to by the Senator from Minnesota [Mr. Ball] in which it was found that in the election the employer had made threats of one kind or another against employees in order to dissuade them from voting for a particular union and the election was invalidated. But if a union makes threats against such employees, or issues defamatory statements misrepresenting the facts, that is not an unfair labor practice, and in no way invalidates the election." 93 Cong. Rec. 4142, Leg. Hist. 1026.

Senator Taft stated further :

"There is no law of any State providing that a man cannot threaten another man that if he does not join a union he may lose his job, or that something may happen to him other than actual physical violence. There are plenty of methods of coercion short of actual physical violence. So that in this section there is no duplication whatever. *But suppose there is duplication in extreme cases; suppose there is a threat of violence constituting violation of the law of the state.* Why should it not be an unfair labor practice? It is on the part of the employer. If an employer proceeds to use violence, as

employers once did, if they use the kind of goon-squad tactics labor unions are permitted to use—and they once did—if they threaten men with physical violence if they join a union, they are subject to state law, and they are also subject to be proceeded against for violating the National Labor Relations Act. *There is no reason in the world why there should not be two remedies for an act of that kind.*" (Emphasis added) 93 Cong. Rec. 4145, Leg. Hist. 1031.

The Amendment was adopted by the Senate on May 2, 1947. 93 Cong. Rec. 4568, Leg. Hist. 1217.

The House of Representatives also considered labor legislation in 1947, and on April 10, 1947, Mr. Hartley introduced H. R. 3020. 93 Cong. Rec. 3400, Leg. Hist. 591. On April 11, 1947, the House Committee on Education and Labor reported on the bill (House Report No. 245, Leg. Hist. 292) as follows:

"Equal Responsibility Before the Law

When employers violate rights that the Labor Act gives to employees or to unions, the Board can issue orders against them. *When employers violate rights of employees or of unions under other laws, they must answer in court for what they do.* Under the bill, when unions and their members violate rights given to employers and to employees, the new Board can issue orders protecting the employers and the employees. * * * *For all these acts and others like them, unions and their members will be equally responsible with other persons under law.*" (Emphasis added) Leg. Hist. 299.

H. R. 3020 was quite different from S. 1126. H. R. 3020 was passed by the House of Representatives on April 17, 1947. 93 Cong. Rec. 3694-3748, Leg. Hist. 769-863. On May 13, 1947, the Senate substituted the language of S. 1126

for the language of H. R. 3020 and then passed H. R. 3020. 93 Cong. Rec. 5298, Leg. Hist. 1522. Committees from the House and Senate met in joint conference May 15-29th. The Conference Report (H. Rept. No. 510), Leg. Hist. 505, adopted the Senate version of Section 8 (b) (1). That report states:

"Under the new section 8 (b) of the Senate amendment, the following unfair labor practices on the part of labor organizations and their agents were defined:

(1) To restrain or coerce employees in the exercise of rights guaranteed in section 7, or to restrain or coerce an employer in the selection of his representatives for collective bargaining or the adjustment of grievances. This provision of the Senate amendment in its general terms covered all of the activities which were proscribed in section 12 (a) (1) of the House bill as unlawful concerted activities and some of the activities which were proscribed in the other paragraphs of section 12 (a). While these restraining and coercive activities did not have the same treatment under the Senate amendment as under the corresponding provisions of the House bill, participation in them, as explained in the discussion of section 7, is not a protected activity under the act. Under the House bill, these activities could be enjoined upon suit by a private employer, specific provision was made for suits for damages on the part of any person injured thereby, and employees participating therein were subject to deprivation of their rights under the act. The conference agreement, while adopting section 8 (b) (1) of the Senate amendment, does not by specific terms contain any of these sanctions, but an employee who is discharged for participating in them will not, as explained in the discussion of section 7, be entitled to reinstatement. *Furthermore, since in section 302 (b), unions are made suable, unions that engage in these practices to the injury of another may subject themselves to lia-*

bility under ordinary principles of law." (Emphasis added) (Leg. Hist. 546)

* * *

"(1) The House bill omitted from section 10 (a) of the existing law the language providing that the Board's power to deal with unfair labor practices should not be affected by other means of adjustment or prevention, but it retained the language of the present act which makes the Board's jurisdiction exclusive. The Senate amendment, because of its provisions authorizing temporary injunctions enjoining alleged unfair labor practices and because of its provisions making unions suable, omitted the language giving the Board exclusive jurisdiction of unfair labor practices, but retained that which provides that the Board's power shall not be affected by other means of adjustment or prevention. The conference agreement adopts the provisions of the Senate amendment. *By retaining the language which provides the Board's powers under section 10 shall not be affected by other means of adjustment, the conference agreement makes clear that, when two remedies exist, one before the Board and one before the courts, the remedy before the Board shall be in addition to, and not in lieu of, other remedies.*" (Emphasis added) (Leg. Hist. 556)

The House adopted the Conference Report on June 4, 1947. 93 Cong. Rec. 6549, Leg. Hist. 899.

The Senate adopted the Conference Report on June 6, 1947. 93 Cong. Rec. 6695, Leg. Hist. 1620.

The foregoing legislative history of the Labor Management Relations Act of 1947 demonstrates that Congress did not intend by the enactment of Section 8 (b) (1) (A) to interfere with the states in the control and remedy of acts of physical force and violence. To the contrary, the intent expressed was that there was no reason why such acts should not be subject to more than one remedy.

Section 8 (b) (1) (A) was intended, as the sponsors of it clearly stated, primarily to insure that representation elections would be free from coercive tactics. It was plainly not intended as a substitute for common law torts.

To sum it all up conservatively — the legislative history of the Act reveals that Congress intended to preserve the exercise of state jurisdiction over common law torts.

3.

Other Extrinsic Evidentiary Factors Do Not Indicate an Intent to Preclude the Exercise of State Jurisdiction Over Torts.

Where the purpose of Congress was not clear from the language of the Act or from its legislative history, this Court has considered other evidentiary factors in determining whether Congress intended to foreclose action by the States. While the legislative history of Section 8 (b) (1) (A) is dispositive of the issue here, it is also true that all other factors support the view that Congress did not intend to eliminate actions in state courts for common law torts.

In determining the effect of the Federal Warehouse Act on State jurisdiction in *Rice v. Santa Fe Elevator Corp.*, 331 U. S. 218 (1947), the Court reviewed and summarized at page 230 the evidentiary factors to be considered in testing for Congressional purpose to proscribe state jurisdictions as follows:

“Congress legislated here in a field which the States have traditionally occupied. * * * So we start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress. *Napier v. Atlantic Coast Line R. Co.*, 272 U. S. 605, 611; *Allen-Bradley Local v. Wisconsin Employment Board*,

315 U. S. 740, 749. Such a purpose may be evidenced in several ways. The scheme of federal regulation may be so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it. *Pennsylvania R. Co. v. Public Service Comm'n.*, 250 U. S. 566, 569; *Cloverleaf Butter Co. v. Patterson*, 315 U. S. 148. Or the Act of Congress may touch a field in which the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject. *Hines v. Davidowitz*, 312 U. S. 52. Likewise, the object sought to be obtained by the federal law and the character of obligations imposed by it may reveal the same purpose. *Southern R. Co. v. Railroad Commission*, 236 U. S. 439; *Charleston & W. C. R. Co. v. Varnville Co.*, 237 U. S. 597; *New York Central R. Co. v. Winfield*, 244 U. S. 147; *Napier v. Atlantic Coast Line R. Co.*, *supra*. Or the state policy may produce a result inconsistent with the objective of the federal statute. *Hill v. Florida*, 325 U. S. 538. It is often a perplexing question whether Congress has precluded state action or by the choice of selective regulatory measures has left the police power of the States undisturbed except as the state and federal regulations collide. *Townsend v. Yecomans*, 301 U. S. 441; *Kelly v. Washington*, 302 U. S. 1; *South Carolina Highway Dept. v. Barnwell Bros.*, 303 U. S. 177; *Union Brokerage Co. v. Jensen*, 322 U. S. 202."

The previous decisions of this Court have established that the Federal scheme of regulation is not so pervasive as to reasonably infer that Congress left no room for the States. *Allen-Bradley Local v. W. E. R. B.*, 315 U. S. 740 (1940); *International Union v. W. E. R. B.*, 336 U. S. 245 (1949); *Algoma Plywood Co. v. W. E. R. B.*, 336 U. S. 312 (1949). The Court has reaffirmed this fact in its latest decision, *Garner v. Teamsters*, 346 U. S. 485 (1953), stating (p. 488):

"The National Labor Relations Act, as we have pointed out, leaves much to the States, though Congress has refrained from telling us how much. We must spell out from conflicting indications of congressional will the area in which state action is still permissible."

This case does not lie in a field where the Federal interest is dominant, such as the field of Alien Registration involved in *Hines v. Davidowitz*, 312 U. S. 52 (1940). Here the case lies within a field which is reserved to the States in the Federal Constitution and the control of which is necessary for the existence of State governments.

Recognition of the fact that there is no evidence of Congressional intent to exclude State action is implicit in the prior decisions of this Court. All of them have turned upon a finding of conflict between Federal and State actions.

In *Hill v. Florida*, 325 U. S. 538 (1945), the court found that the Florida Statute requiring union agents to secure a state license conflicted with the Federal Act. The Court said (p. 543):

"Our holding is that the National Labor Relations Act and §§ 4 and 6 of the Florida Act as here applied cannot 'move freely within the orbits of their respective purposes without impinging upon one another.' "

In *Bethlehem Steel Co. v. New York Board*, 330 U. S. 767 (1947), the court found that action by the State Labor Relations Board conflicted with action by the National Labor Relations Board. The court said (p. 775):

"Thus, if both laws are upheld, two administrative bodies are asserting a discretionary control over the same subject matter, conducting hearings, supervising elections and determining appropriate units for bar-

gaining in the same plant. They might come out with the same determination, or they might come out with conflicting ones as they have in the past."

In *La Crosse Telephone Corp. v. W. E. R. B.*, 336 U. S. 18 (1949), the court struck down the certification of a union by the Wisconsin Labor Relations Board and followed its decision in the *Bethlehem* case, saying (p. 25): "We thought the situation too fraught with potential conflict to permit the intrusion by the State."

In *Plankinton Packing Co. v. W. E. R. B.*, 338 U. S. 953 (1950), the Supreme Court in a *per curiam* decision citing the *Bethlehem* and *La Crosse* cases, held invalid an order of the Wisconsin Board which found the Company and the Union had interfered with an employee in his right not to engage in union activity.

In *Auto Workers v. O'Brien*, 339 U. S. 454 (1950), the court struck down a Michigan statute which required a strike-vote conducted by the state before a strike could be called. The Federal Act safeguards the right to strike and the court said (p. 458):

"Without question, the Michigan provision conflicts with the exercise of federally protected labor rights. A State statute so at war with federal law cannot survive."

In *Amalgamated Ass'n v. W. E. R. B.*, 340 U. S. 383 (1951), the court struck down the Wisconsin Statute forbidding strikes and requiring arbitration in public utilities. The court said (p. 394):

"And where, as here, the state seeks to deny entirely a federally guaranteed right which Congress itself restricted only to a limited extent in case of national emer-

gencies, however serious, it is manifest that the state legislation is in conflict with federal law."

The Court has upheld the right of the States to act in the field of labor relations when no conflict was found. *Allen-Bradley Local v. W. E. R. B.*, 315 U. S. 740 (1940); *International Union v. W. E. R. B.*, 336 U. S. 245 (1949); *Algoma Plywood Co. v. W. E. R. B.*, 336 U. S. 312 (1949).

B.

REDRESS IN DAMAGES FOR TORTIOUS CONDUCT DOES NOT CONFLICT WITH FEDERAL LABOR POLICY

The judgment below does not deprive Petitioners of any right guaranteed to or conferred upon them by the Labor Management Relations Act of 1947. It would be absurd even to suggest that Congress intended to give any protection whatsoever to the use of force and violence.

Thus, the conflict, if any, must lie between remedies.

The decision in this case concerns not an unfair labor practice, but a completed common law tort. The remedy for such a tort is an action for damages. The National Labor Relations Board is not concerned with damages for completed torts. The National Labor Relations Board is empowered to *prevent* future unfair labor practices, *not to adjudicate* damages caused by past activities.

If the activity of Petitioners constituted an unfair labor practice, then the Board, interested only in preventing future occurrences, could only have issued its cease and desist order. The Board is not concerned, nor are its processes hampered by the fact that the guilty Petitioners are also required by a state court, acting under state law, to pay damages to the

party injured by their wrongs. Plainly in such case there is no conflict.

On the other hand, if the activity of Petitioners was not an unfair labor practice, then the Board is not concerned, and the activity lies in a field where if not "governable by the State * * * it is entirely ungoverned." In such circumstances, this court has held the state may act. *International Union v. W. E. R. B.*, 336 U. S. 245 (1949).

The result in this case does not conflict in any way with Federal Policy as pronounced in the Labor Management Relations Act of 1947. This conclusion is supported by the fact that the conduct of Petitioners would be not only a tort, but also a crime in many states; and as this Court has said, "no one questions the State's power to police coercion * * *". *International Union v. W. E. R. B.*, 336 U. S. 245 (1949), at page 252.

Petitioners also agree (Brief 43-44) they may be prosecuted criminally under state jurisdiction for the acts they have committed.

Everyone agrees, therefore, at least in the criminal aspect, that States have jurisdiction to police violent activities, and that such policing does not conflict with the Federal labor policy. If that be so, it follows that no conflict results if the guilty Petitioners be required to pay damages for their unlawful acts. There is no greater conflict with the Federal policy when one is required to pay damages than when one guilty of an unfair labor practice, is required to serve a term in the state penitentiary.

Petitioners in their brief assert a right to have their rights considered by an administrative agency skilled in labor relations matters. The judgment of the court below has not denied Petitioners the right to avail themselves of the remedies and procedures afforded by the Act. Petitioners them-

selves chose not to exercise that right even though a chief purpose of the Act is to provide machinery for establishing a collective bargaining agent. See Statement of Policy, and Section 9. Petitioners refused to utilize that procedure and elected to use force and violence instead.

Clearly there is no such repugnancy between the common law tort remedy provided by the state and the Federal labor policy as would require the emasculation of traditional state jurisdiction in the situation presented here.

C.

OTHER PRESUMPTIONS OF STATUTORY INTERPRETATION FAVOR THE RETENTION OF COMMON LAW JURISDICTION BY THE STATES.

"Statutes which invade the common law * * * are to be read with a presumption favoring the retention of long-established and familiar principles, except when a statutory purpose to the contrary is evident."¹⁰

Petitioners ask not only that the Labor Management Relations Act of 1947 be construed in derogation of common law, but that long established common law be eradicated, with no substituted remedy afforded.

In other words, if Petitioners are correct in their contention, there is the following result:

1. The aggrieved party cannot bring a common law tort action in a State Court to recover damages for a tort arising out of conduct involving an unfair labor practice, the state court having been deprived of its jurisdiction.
2. The aggrieved party cannot recover damages in a

¹⁰ *Isbrandtsen Co. v. Johnson*, 343 U. S. 779 (1952) at page 793.

proceeding before the National Labor Relations Board, no provision for a money damage award having been made by the Act.

3. The aggrieved party will have no place in which to bring an action to recover damages for a tort arising out of conduct involving an unfair labor practice.

Any action on the part of Congress producing such a result would be repugnant to and in violation of the Fifth Amendment to the Constitution of the United States.

The Fifth Amendment provides, in part, as follows:

“ * * * ; nor shall any person be deprived of life, liberty or property, without due process of law ; * * * .”

The Constitution contains no description of what processes shall or shall not be considered “due process of law.” It is manifest, however, that it was not left to the legislative power to enact any process which might be devised. In other words, the phrase, “due process of law” has been held to be a restraint on the legislative as well as the executive and judicial powers of the Government and cannot be so construed as to leave Congress free to make any process “due process of law”, by its mere will.

A right of action to recover damages for an injury is “property” which neither Congress nor a legislature has power to destroy. 12 *Am. Jur.*, Const. Law, Section 661; 16 *C. J. S.*, Const. Law, Section 599, P. 1196.

In *Angle v. Chicago & St. Paul, etc. Railway*, 151 U. S. 1 (1893), the Court used the following language at page 19:

“A right of action to recover damages for an injury is property, and has a legislature the power to destroy such property? An executive may pardon and thus relieve a wrongdoer from the punishment the public ex-

acts for the wrong, but neither executive nor legislature can pardon a private wrong or relieve the wrongdoer from civil liability to the individual he has wronged."

Of course, a person has no property right, in a constitutional sense, in any particular form of remedy so long as there is preserved for his benefit a substantial right to redress by some effective procedure. *Gibbes v. Zimmerman*, 290 U. S. 326 (1933).

If it be correct that Congress has deprived a State Court of its jurisdiction over a common law tort action for damages arising out of an unfair labor practice without providing an aggrieved party with another substantial right to redress, then such action of Congress was and is repugnant to and in violation of the Fifth Amendment to the Constitution of the United States and, therefore, is void. *Marbury v. Madison*, 1 Cranch 137 (1803); *Bank of Columbia v. Okely*, 4 Wheat 235 (1819); *Den v. The Hoboken Land and Improvement Company*, 18 How. 272 (1855); *Dred Scott v. Sandford*, 19 How. 393 (1856); *Munn v. Illinois*, 4 Otto 113 (1876); *Hurtado v. California*, 110 U. S. 516 (1884); *Eastman v. County of Clackamas*, 32 Fed. 24 (1887); *North Carolina v. Vanderford*, 35 Fed. 282 (1888); *Robertson v. Baldwin*, 165 U. S. 275 (1897); *In Re Opinion of Justices*, 211 Mass. 618, 98 N. E. 337 (1912); *Ludwig v. Johnson*, 243 Ky. 533, 49 S. W. (2d) 347 (1932); *Scriven County v. Brier Creek Hunting & Fishing Club*, 202 F. (2d) 369 (1953).

However, the Court will not reach this question because under settled rules of construction the court will adopt the construction of an act which is free of constitutional difficulties. This is particularly true in this instance because the legislative history of the Act reveals that the Congress did not even consider the result for which the Petitioners contend.

D.

ALL AUTHORITIES SUPPORT THE RETENTION OF
STATE JURISDICTION OVER TORTS

1.

The Commentators Support State Jurisdiction

The Court will recall that it has been the policy of the Board to appear in recent cases before this Court and, whenever possible, argue in favor of the exclusiveness of the Board's jurisdiction. Mozart G. Ratner, formerly Assistant General Counsel of the National Labor Relations Board, was charged with that duty. However, even Mr. Ratner did not argue that the Act set at naught the generally applicable law of the states. He wrote, 3 Labor Law Journal 761-2:

"This is not to say that every aspect of conduct reachable by the National Board because it occurs in a labor relations context is necessarily removed from State control. The Act is a labor relations measure; its function and purpose are to define the rights of the parties in collective bargaining and labor disputes. Conduct which offends the Act's standards because it infringes rights which Congress desired to protect may at the same time independently offend general standards of conduct applied by the States regardless of the context in which it occurs.

"The most familiar example of this is the use of violence by a labor organization to prevent nonstrikers from crossing its picket line. When the Taft-Hartley Act was being debated it was urged by some that acts of violence of this character should not be dealt with at all by the Federal Act, but should be left entirely to the States to police (93 Cong. Rec. 4019, 4021, 4024, 4428). Recognizing that acts of violence and coercion, as such,

were and should remain independently unlawful under State law, Congress nevertheless decided that when violence and other coercive conduct by labor organizations infringed the self-organizational rights of employees, it should be treated as an unfair labor practice under the Federal Act (Senate Report No. 105, Supplemental views of Senators Taft, Ball, Donnell, and Jenner, 80th Cong., 1st Sess., p. 50; H. Conf. Rep. No. 510, 80th Cong., 1st Sess., p. 42). Consequently, although Section 8 (b) (1) (A) authorizes the Board to enjoin picket line violence on the ground that it interferes with the right of employees to refrain from participating in concerted activity, the States remain free to prohibit and to punish such conduct in the interest of preserving the peace. See, e. g., *Erwin Mills, Inc. v. Textile Workers Union*, 234 N. C. 321, 67 S. E. 2d 372. Since the basis of the State's action is not grounded in labor relations policy and the rights it protects are not the rights protected by the National Act, there is no duplication of Federal policy or protection. For the same reason the States remain free to punish on traditional non-labor-relations grounds acts of violence and coercion by individual employees, who, unless they are acting as agents of a union, are immune from the ban imposed by Section 8 (b) (1) (A). It should be noted, moreover, that this is not a one-way street. Thus, although an employer's assault upon a union organizer may amount to 'interference' within the prohibition of Section 8 (a) (1) of the National Act, the States retain jurisdiction to punish such an assault as a police court matter."

In a law review article, Cox and Seidman, *Federalism and Labor Relations*, 64 Harvard Law Review 211 (December, 1950), "arguing for a large area of exclusive federal authority in order to permit the development of a unified labor relations program", the authors state (at page 236) :

"In *Allen Bradley Local 1111 v. Wisconsin Employment Relations Bd.* the Supreme Court held that the original Wagner Act did not restrict the power of a state to deal with mass picketing and violence in connection with a labor dispute. The Taft-Hartley Amendments gave the N. L. R. B. jurisdiction over such misconduct whenever it was directed against individual employees and affected interstate commerce. The amendment should not prevent a state from asserting its former power to deal with breaches of the peace and destruction of property. Mass picketing, assault and battery, intimidation and similar misconduct are unlawful regardless of whether there is a labor dispute. Congressional regulation as part of a labor program can scarcely be taken to show that Congress meant to render the states powerless to deal with offences against public order which are forbidden under laws of general application. Nor is such misconduct a concerted activity protected by Section 7."

2.

*The Decided Cases Hold That the States Retain
Jurisdiction Over Common Law Torts*

In cases involving common law tort actions in which it has been claimed that such actions were superseded by the Federal Labor policy, the jurisdiction of the State has been sustained.

Thus in *Barile v. Fisher*, 197 Misc. 493, 94 N. Y. S. (2d) 346 (Sup. Ct. 1949), the Court held, page 350:

"The defendant moved to dismiss the complaint upon the ground that it was insufficient upon its face and also upon the ground that the court had no jurisdiction of the subject matter of the action. The second ground urged for dismissal may be readily disposed of. Of course, this court has no jurisdiction to entertain pro-

ceedings to remedy alleged unfair labor practices under the National Labor Relations Act. Exclusive jurisdiction with respect to such matters is vested in the National Labor Relations Board. However, the complaint is not based upon alleged violations of the Federal Statute, but is based upon common-law tort principles. The fact that the grievance complained of in a common-law tort action may also constitute an unfair labor practice under the Federal Statute does not deprive the state courts of jurisdiction over the common-law tort action. The motion for dismissal for lack of jurisdiction is therefore denied."

In *Kuzma v. Millinery Workers Union Local No. 24*, 27 N. J. Super. 579, 99 A. (2d) 833 (1953), appellants, Kuzma and his wife, brought action against the defendant labor union and individual members thereof, charging that defendants had contrived to obtain the wife's discharge from her employment because she refused to contribute toward a gift to a union official.

The defendants moved for dismissal upon the ground that the cause of action pleaded constituted an unfair labor practice under the National Labor Relations Act, and was therefore reparable exclusively before the National Labor Relations Board, but the court said (pp. 837-840):

"It is a commonplace of constitutional law that the Federal Government has control over interstate commerce. If a Congressional enactment, either expressly or by necessary implication, occupies and preempts a particular field of commerce, state control thereof terminates. And this doctrine is applicable to the labor relations of employers whose operations are in commerce to the requisite degree.

* * *

"The notion that the traditional jurisdiction of the state court to enforce a common-law tort liability has

been removed by this federal enactment because the conduct constitutes an unfair labor practice as well is as startling as it is novel. There certainly is no express declaration of Congress of such supersedure. And in the absence thereof, plainly the State should not yield its sovereignty unless the intention to preempt and occupy the field is an inescapable conclusion from the language employed. This approach is not a mere chauvinistic desire for the perpetuation of state control but rather a recognition of a principle long since established by the United States Supreme Court. (Cases cited)

* * *

"All of these considerations lead us to the conclusion that there is no such repugnancy between the remedy provided by the Labor Act where an employee has been subjected to unfair labor practice by a labor union, and his common law remedy as would manifest a Congressional intention to emasculate the jurisdiction of the state courts."

Russell v. International Union, Ala., 64 So. (2d) 384 (1953), reaches the same result.

Thus, the decisional authority holds that the Federal labor policy does not abolish state jurisdiction over common law torts.¹¹

¹¹ At least 32 states have statutes of general application protecting the right to work from coercive interference: Alabama, Arizona, Arkansas, Colorado, Connecticut, Florida, Georgia, Illinois, Kentucky, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New York, North Dakota, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia and Wisconsin. The states also have consistently enjoined the use of unlawful means in connection with labor disputes. *United Mineral & Chemical Corp. v. Katz*, 33 L. R. R. M. 2453 (U. S. D. C. E. D. N. Y. 1954); *Lodge Mfg. Co. v. Gilbert*, Tenn., 260 S. W. (2d) 154 (1953); *Erwin Mills v. TWUA*, 235 N. C. 107, 68 S. E. (2d) 813 (1952); *Art Steel Co. v. Velasquez*, 280 App. Div. 76, 111

E.

CHOICE OF CONSEQUENCES FAVORS THE
DECISION BELOW

A choice of consequences favors affirmance of the judgment of the Supreme Court of Appeals of Virginia. The resulting consequences will not be at all as Petitioners urge in their brief.

If the State's jurisdiction is denied in this case, it will mean that the Mine Workers are at liberty to ignore the procedures of the Board and to employ force (as they did against Laburnum) to accomplish their end. On the other hand, if the State's jurisdiction be sustained, the decision will be a deterrent to the use of force and an incentive to use of the peaceful procedures provided by the Act.

The Board has peaceful procedures for the determination of questions of representation, and it also has peaceful procedures by which recognition of a chosen representative can be effected.

Affirmance of the judgment below will not lead to litigation against unions, because unions will be fully protected if they follow the procedures provided by the Act and no action at law will lie against them.

N. Y. S. (2d) 198 (1952); *Williams v. Cedartown Textiles, Inc.*, 208 Ga. 659, 68 S. E. (2d) 705 (1952); *Wortex Mills, Inc. v. Textile Workers Union*, 369 Pa. 359, 85 A. (2d) 851 (1952); *International Moulders v. Texas Foundries*, 241 S. W. (2d) 213 (Tex. Civ. Apps. 1951); *Grist v. Textile Workers Union*, R. I., 82 A. (2d) 402 (1951); *Missouri v. Thatch*, 361 Mo. 190, 234 S. W. (2d) 1 (1950); *Rice & Holman v. United Electrical Radio & Machine Workers*, 3 N. J. S. 288, 65 A. (2d) 638 (1949); *Southern Bus Lines, Inc. v. Amalgamated Ass'n.*, 205 Miss. 354, 38 So. (2d) 765 (1949). A decision against state jurisdiction here would largely nullify all of the state statutes and would overrule all of the foregoing decisions.

CONCLUSION

Petitioners are asking that this Court relieve them of the responsibility, which is justly theirs, for acts of force.

This Court has never indicated approval of acts such as those committed by Petitioners. Nor has this Court ever indicated an intention to alleviate the consequences of such acts.

This case is the converse of *Garner*. It is the case which this Court said *Garner* was not. Thus, in *Garner* it was said:

"The National Labor Management Relations Act, as we have before pointed out, leaves much to the States, though Congress has refrained from telling us how much. We must spell out from conflicting indications of congressional will the area in which state action is still permissible.

"This is not an instance of injurious conduct which the National Labor Relations Board is without express power to prevent and which therefore either is 'governable by the State or it is entirely ungoverned.' In such cases we have declined to find an implied exclusion of state powers. *International Union v. Wisconsin Board*, 336 U. S. 245, 254. Nor is this a case of mass picketing, threatening of employees, obstructing streets and highways, or picketing homes. We have held that the state still may exercise 'its historic powers over such traditionally local matters as public safety and order and the use of streets and highways.' *Allen-Bradley Local v. Wisconsin Board*, 315 U. S. 740, 749. Nothing suggests that the activity enjoined threatened a probable breach of the state's peace or would call for extraordinary police measures by state or city authority. Nor is there any suggestion that petitioners' plea of federal jurisdiction and preemption was frivolous and dilatory, or that the federal Board would decline to exercise its powers once its jurisdiction was invoked."

It follows that the jurisdiction of the State Court should be sustained and the judgment of the Supreme Court of Appeals of Virginia affirmed.

Respectfully submitted,

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APPENDIX

BLEED THROUGH

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App. 1

Appendix A

The provisions, pertinent here of the Labor Management Relations Act of 1947, Public 101, 80th Congress, H. R. 3020, are:

"An Act

To amend the National Labor Relations Act, to provide additional facilities for the mediation of labor disputes affecting commerce, *to equalize legal responsibilities* of labor organizations and employers and for other purposes. * * *

"Title I — Amendment of National Labor Relations Act.

"Sec. 101. The National Labor Relations Act is hereby amended to read as follows:

Findings and Policies

* * *

"Experience has further demonstrated that certain practices by some labor organizations, their officers, and members have the intent or the necessary effect of burdening or obstructing commerce by preventing the free flow of goods in such commerce through strikes and other forms of industrial unrest or through concerted activities which impair the interest of the public in the free flow of such commerce. *The elimination of such practices* is a necessary condition to the assurance of the rights herein guaranteed.

"It is hereby declared to be the policy of the United States *to eliminate* the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining * * *.

* * *

App. 2

Section 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3).

"Sec. 8. * * *

(b) It shall be an unfair labor practice for a labor organization or its agents—(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in Section 7 * * *.

Sec. 9(c)(1). Whenever a petition shall have been filed, in accordance with such regulations as may be prescribed by the Board—

(A) by an employee or group of employees or any individual or labor organization acting in their behalf alleging that a substantial number of employees (i) wish to be represented for collective bargaining and that their employer declines to recognize their representative as the representative defined in section 9 (a), or (ii) assert that the individual or labor organization, which has been certified or is being currently recognized by their employer as the bargaining representative, is no longer a representative as defined in section 9 (a); or

(B) by an employer, alleging that one or more individuals or labor organizations have presented to him a claim to be recognized as the representative defined in section 9 (a);

the Board shall investigate such petition and if it has

App. 3

reasonable cause to believe that a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice. Such hearing may be conducted by an officer or employee of the regional office, who shall not make any recommendations with respect thereto. If the Board finds upon the record of such hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof.

Sec. 10(a). The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in Section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise

* * *

Appendix B

Petitioner's instructions to the jury guaranteed all their rights (R. 137-141):

INSTRUCTION "A"

The jury is instructed that:

Since the events complained of are alleged to have taken place in the State of Kentucky, the law of that state determines the substantive rights of the parties in this case.

INSTRUCTION "C"

The jury is instructed that:

The plaintiff's common laborers and carpenter helpers had the right, free from restraint or coercion by the plaintiff or its agents, to associate for self-organization; to designate collectively representatives of their own choosing; to negotiate the terms and conditions of their employment, all for the purpose of effectively promoting their own rights and welfare. Such employees, collectively or individually, had the right to strike, to engage in peaceful picketing, and to assemble peaceably.

In the exercise of the above rights such employees had the right to interfere with the plaintiff's business without being liable in damages for such interference.

The above rights are not lost because others who are not employees of the plaintiff join with them in asserting the employees' rights.

Minor disorders and trivial rough incidents on a picket line, not serious enough to intimidate or coerce a man of ordinary strength of character, do not deprive the picketing of its peaceful character.

INSTRUCTION "D"

The jury is instructed that :

In Kentucky the employees of the plaintiff, including common laborers and carpenter helpers, had the right to organize to promote their mutual advantage, to secure fair wages, to secure better working conditions, to secure better hours, to induce plaintiff to establish usages with respect to wages and working conditions which are fair, reasonable, and humane, and to achieve the fundamental right to contract collectively with the plaintiff, Laburnum Construction Corporation.

To accomplish these legitimate ends, employees of the plaintiff, including common laborers and carpenter helpers, may strike, may indulge in peaceful picketing, may use any peaceful means not partaking of fraud to induce others to become members; may acquaint the public with facts which it regards as unfair, publicize its cause, and use persuasive inducements to bring its own policies to triumph. When engaged in a lawful strike its members may join in a crowd to persuade other men who propose to work not to take their places. Its members have a lawful right to assemble, to address their fellow-men, and endeavor in peaceful, reasonable, and proper manner to persuade them regarding the merits of their cause and to enlist sympathy, support, and succor in the struggle for the legitimate labor ends, and finally its members may assemble and agree to pursue, and pursue any legal means to gain their ends, that is, use persuasive powers in a peaceful way.

INSTRUCTION "E"

The jury is instructed that :

If you find from the evidence that the plaintiff's employees refused to work for it solely because of the existence of a

App. 6

peaceful picket line and that they would have worked if there had been no picket line, your verdict must be for the defendants.

INSTRUCTION "F-1"

The jury is instructed that :

Under the law the plaintiff's common laborers and carpenter helpers had a right to organize for the purpose of bargaining collectively with the plaintiff. If you believe that the plaintiff restrained or coerced such employees in the exercise of these rights, then the plaintiff acted unlawfully.

INSTRUCTION "O-2"

The jury is instructed that :

If you believe from the evidence in this case that none of the defendants, or any of their respective agents acting within the scope of their authority, have acted wantonly, recklessly, or oppressively or with sufficient malice as implies a spirit of mischief or criminal indifference to civil obligations, you cannot award plaintiff any punitive damages in this case, and if you should find for the plaintiff, its recovery shall be limited to compensatory damages only.

INSTRUCTION "P"

The jury is instructed that :

If W. O. Hart and the men associated with him on the occasions complained of acted solely for the purpose of enforcing their legal rights in a lawful manner, and not for the purpose of injuring the plaintiff, no exemplary or punitive damages can be awarded plaintiff against any of the defendants.

Appendix C
**THE REIGN OF TERROR
AT WIDEN, W. VA.***

By Craig Thompson

This once-peaceful little town is not in some war-ravaged, jungle-law country — it's right in the U. S. A. But ever since John L. Lewis' "organizers" moved in, the people walk in fear, while dynamiters, arsonists and thugs go unpunished for their crimes.

Widen, West Virginia, is a coal camp that sprawls over the bottom of a hollow among the hills some sixty miles northeast of Charleston, the state capital. With its tipple, wash house, shops, railroad yard and "gob" piles, it is first and foremost a colliery. With its school, post office, bank, store, movie, medical dispensary, Y.M.C.A., baseball park and 310 dwellings, it is also a town, inhabited by 1274 persons, some of whom have raised children and grandchildren here. It is a company town, owned from tipple to barbershop by the Elk River Coal and Lumber Company, a private firm.

In this remote spot an outbreak of "labor trouble" occurred in September of 1952, and a picket line was stretched across the only automobile road into Widen. There it remained until Christmas Eve of 1953, when the pickets, conceding their cause to be hopeless, withdrew. During these fifteen months the company and people, at least in theory, continued to be as much entitled to governmental protection of their lives, property and civil rights as are the citizens of any community at all times. But, in fact, they lived in a reign of terror, and at times in a state of siege, instigated by a band of men who sought to force them to sign up with the United Mine Workers of America, whether they wanted to or not.

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App. 8

It was abundantly plain that a majority did not want to, and never had.

In this "strike," as UMW officials called it, three railroad bridges, two electric-power substations and one high-tension tower were destroyed by dynamite; nine houses or barns burned; a train stopped, its passengers removed at gun point and one beaten severely; another train fired on, with bullets and slugs pinging against a coach that contained a dozen passengers, including women and children; and twenty-nine automobiles belonging to individual citizens overturned, shot up, dynamited or "rocked" with fist-sized stones flung by strong arms at short range. The climax was an ambush involving some twenty shotguns and rifles fired from darkness upon a motorcade on a public road, killing one man and wounding three.

In the case of the killing, the West Virginia state police acted vigorously and promptly. But all the other acts of violence were approached, by the same police, with attitudes that ranged from marked sluggishness to downright indifference.

The reason for this indifference is traceable beyond individual troopers and their officers, to the political convictions and obligations of Democratic Governor Okey L. Patteson and his successor, William C. Marland, who for the most part, has inherited the necessity of trying to defend a situation that developed under his predecessor. Ultimately, however, the explanation comes to rest more on a fact than on any individual. The fact is that, politically speaking, the state's most powerful figure is John Llewellyn Lewis, the thundering chieftain of the UMW.

Lewis' power in West Virginia stems from his ability to deliver the votes of his union members to the candidates of his choice. His basic interest is to promote and protect his tightly organized labor empire. In elemental logic the

App. 9

candidates he supports must subscribe—as Patteson did and Governor Marland now does—to the Lewis code of labor tactics. Stripped to its simplest expression this code asserts that in any dispute between an employer and an employee, the employee automatically becomes the injured party and must be given every possible governmental protection and indulgence.

However correct such an assumption may be in many cases, it cannot be right in all. Yet its acceptance by a state government is the circumstance that raises Widen's war above the dimension of a local feud in a foothill or just another clash between labor and management. What has happened at Widen is an explicit and explosive exposure of what can happen when a state's officials become beholden to a labor boss.

The strike was a year old and still on when this reporter began making inquiries concerning it and learned that, in this case, the usually thunderous Lewis has chosen to stay silent. He declined to be interviewed, and, through subordinates, said he had made it a "policy" not to talk about Widen.

Others in the UMW have not been so circumspect. One of these is William Blizzard, forceful veteran of many a bloody organizing campaign, and Lewis' principal lieutenant in West Virginia. In various statements, Blizzard has said: (1) the UMW had nothing to do with instigating the Widen strike, but became involved, after it had begun, when the strikers appealed to him for help; (2) that the ambush in which a nonstriking worker was killed was no "ambush" at all, but a manly and justifiable attempt by the strikers to defend themselves after being fired on by company guards; (3) that the strikers at Widen numbered 400, or roughly two thirds of the company pay roll; (4) that the company was to blame for everything that had happened through its

refusal to "bow to the will of its employees."

Blizzard is president of the UMW's District No. 17, which has 43,000 members in Central and Southern West Virginia. He has spent his adult life as an organizer in these and the adjacent fields of Kentucky and once, years ago, was indicted, but never convicted, on a treason charge growing out of his alleged leadership of an armed insurrection against United States troops sent to quell labor disturbances. Now in his sixties, he is a stocky man with a rugged, ruddy, weatherbeaten face, who wears expensively conservative clothes and runs his district from a capacious office in an old, red-brick and white-pillared mansion in Charleston. Among West Virginia's Democratic officeholders he enjoys the status of a sort of elder statesman *ex officio*.

On December third, three weeks before the Widen picket line dissolved, this reporter had a two-hour interview with Blizzard.

Reiterating all his previous statements, Blizzard said, "I am feeding the families of a hundred and forty-five strikers down there now, and there are at least a hundred more strikers who have gone away or taken other jobs. According to my analysis of sworn statements the company has to make to various state agencies, I figure the company is losing at least one dollar on every ton of coal it sells. For 1953 that will mean something like six hundred thousand dollars. They're giving away their capital and their assets without a red copper in return, and I don't imagine they'll go on doing that for more than another year or so. Why, they'd be better off just to shut down the operation—at least they'd save their coal."

Blizzard did not say he wanted to see the operation shut down. But from the bland, quick, conspiratorial smile with which he punctuated his statement, it was apparent that he

did not regard such an outcome as in the character of a calamity.

Actually, Blizzard's estimates of the company's losses during the first twelve months of Widen's violence were decidedly low. When the UMW's expenditures, for which Blizzard advanced no precise figures but which can be estimated roughly at twenty dollars weekly per striker, are added to the company's losses, it becomes likely that at the end of 1953 Widen's war represented a cumulative, combined cost of around \$2,000,000.

Yet the money was the least important element involved. At Widen it was the violence and the events leading up to it that made the story. On this score, Blizzard was adamant in insisting that it was all the work of armed company guards or due to their brutal provocations.

"I went down there," he said, "and told my boys that if they expected me to support them, they would have to stay within the law. But when they began to get beat up and shot at—well, that's different."

Considering the quality of marksmanship indigenous to the area, if Blizzard's boys had been shot at even a tenth as often as he says, it is odd that none of them was hit. The fact remains that all the bullet wounds were sustained by the other side. Going a step further, in order to accept Blizzard's view one has to believe that the company paid men to blow up its bridges, strafe its train, burn its houses, shoot its nonstriking employees and wreck their automobiles.

All the evidence, available to any open-minded inquiry, shows that Blizzard's boys were outside the law before he admonished them, and remained there afterward. His self-appointed position was that of a man who disclaimed responsibility for an indefensible series of illegal acts, including one killing, while he fed, financed and defended those who committed them.

In early December, Blizzard appeared determined to continue the strike indefinitely. But when the pickets threw in the sponge three weeks later, he said, "I will go along with their decision." Whether this means genuine peace or merely a temporary, tactical truce is something only time can prove. In sporadic forays, Widen's war has been going on more than forty years since the UMW made its first unsuccessful attempt to establish a local union there in 1912.

AN ANNUAL PAYROLL OF \$4,000,000

At that time the Elk River company was only eight years old. It had been formed in 1904 by Joseph Gardner Bradley, a grandson, on his mother's side, of the James D. Cameron who was Secretary of War in Grant's second administration and who, in 1869, acquired the 80,000-acre tract of timberland that comprises the Elk River company property. Bradley, now seventy-two, and still the company's dapper, slender and vigorous president, has built it into a complex that consists of three towns, a twenty-mile railroad, a lumbering camp that supplies timbers for shoring his mine drifts, and a mine with a productive capacity of 1,000,000 tons of high-quality bituminous coal a year. In good times it contributes an annual payroll of about \$4,000,000 to West Virginia's economy.

As Bradley's operation grew, so grew the UMW determination to gain control of its labor. The 1912 campaign was before Blizzard's time in this area, and Bradley's version is the only one available. He says that he was then employing a mixture of local and immigrant labor, the immigrants being mostly Italians. The UMW organizers, he says, failed to make any progress among the natives—mostly hill people descended from pre-Revolutionary settlers of Anglo-Saxon stock—but they got the immigrants

App. 13

stirred up to the point where there was not only friction between the immigrants and the company but between immigrants and natives as well. Bradley ended it by shipping all the foreigners out, and thereafter followed a policy of employing nothing but local labor.

Blizzard's first, and the UMW's second, attempt at Widen was in 1934. "At that time," he recalls, "they had something in the way of a company union called Widnra, the name made up of the word Widen and the initials of the National Recovery Act. In those days there was no automobile road, and anybody who went to Widen had to get there on the company railroad. We went in, but they just rounded us up and shipped us out again, and that was that. I didn't make an issue of it."

The company version is that Blizzard came into Widen and held organization meetings at various points around the town for three months, during which the response grew steadily more desultory, until he gave up and left. "There was no violence," says a company official, "except one instance where a special policeman tried to break up a meeting and had a scuffle with Blizzard."

The third attempt, in 1941, was marked by lots of gunplay concerning which there are two versions. Bradley claims that Widen was besieged by 200 to 300 UMW people, "brought in from outside," who took up positions on the hills overlooking the camp and began shooting down into it. His employees, he says, got down their shotguns and rifles, formed into combat teams and chased the attackers away. Blizzard claims that his boys got shot at first, and, being only human, just naturally had to shoot back, but there is no explanation of how they came by all those rifles so quickly when the bullets first began to fly. In any case, the most notable casualty was a superintendent of state police, who died of a heart attack brought on, so it was

claimed, by his efforts to cope with the sanguinary doings in the Widen hills.

Blizzard moved on Widen again in 1944, this time with a demand for a National Labor Relations Board election, which he got. In the campaign, a UMW organizer named E. H. Foley shot and killed a Widen miner named Joe Groves. In this case, the circumstances are undisputed. Foley, who was the smaller man, got into a fist fight with Groves, and while they scuffled, Foley pulled his gun and killed his antagonist. He pleaded self-defense, but two separate local juries convicted him of second-degree murder, and twice the state's Supreme Court reversed the conviction on technical grounds. The case has not since been retried, and although he is under bond, Foley remains about as free as he was the day he killed Joe Groves.

Meanwhile, the UMW lost the labor election by a margin of eight votes. Again, in 1946, Blizzard demanded and got another election. This campaign produced nothing more jarring than a number of fist fights, and Blizzard lost again, by thirteen votes.

In both of these elections, the UMW competition was a local union called the Employees League of Widen Miners. It had been organized in 1938 to succeed the earlier Widnra, and certified by the NLRB as the legal bargaining agency for Bradley's employees. Though the league beat the UMW on both occasions, the margins by which it won do not accurately reflect the sentiment of the Widen miners. In both elections scores of eligible employees did not vote at all, and still others, either deliberately or through ignorance, spoiled their ballots. The main point is that while both elections unmistakably showed the existence of UMW sentiment at Widen, neither the UMW nor the league came within 30 votes of attaining a simple majority.

For six years after the last NLRB election Widen re-

remained relatively peaceful, until, in September, 1952, UMW agitation once again shattered its busy calm. In the interim the Widen league had signed a contract which provided the company's miners with an average of two dollars a day more than does the standard UMW agreement because it gives them nine hours' pay for eight hours at the coal face, in contrast to the UMW practice of getting eight hours' pay for seven and a half at the face. There also had been instituted a forty-cents-a-ton welfare fund that pays more and larger benefits than does the UMW fund. Since the league's members pay only fifty-cents-a-month dues, compared to UMW dues of two dollars, the best the UMW could offer the Widen employees was a cut in pay and benefits and an increase in union dues.

If a handbook on labor tactics should ever be compiled, Widen would provide a classic chapter on how to set up a phony strike. Its central figure would be a man named Dennis Zirkle, a native of the locality. Zirkle had worked at Widen, then gone "outside," leaving behind a reputation as a good, careful and productive miner. When he returned and asked for a job, he got it.

Zirkle told some of the other miners at Widen that while he was away he had gone to a school for union organizers and acquired a UMW card. This, Blizzard emphatically denies. "Zirkle," he says, "never worked for the UMW and he never worked under a UMW contract. Nor was he ever the leader of that strike down there." Then he adds, "It wouldn't do for me to try to fool anybody about these things because then I'd wind up fooling myself, and I can't afford that. I know."

Concerning Zirkle's union membership, Blizzard is, of course, the final authority. But if, as he says, he had nothing to do with instigating the Widen strike, and only got into it at a later date, then his knowledge of other matters must

Zirkle's name was on none. Bradley believed that Zirkle had confidently expected to win the nomination, but, watching him narrowly, he could see no sign of disappointment or chagrin. It was Zirkle, in fact, who proposed that they make Waggoner the unanimous choice, which was done.

Next day, a Saturday, the seven men met with Facemire and other league officers. As Bradley had anticipated, Facemire was eager to patch up the rift by appointing Waggoner. He also showed the seven young insurgents the league's books, which they pronounced in good order. So Widen went into Sunday, its weekly day of no work, in the serene belief that its disturbances were over. It couldn't have been more mistaken.

Nearly half of Widen's miners live outside the town, in houses scattered through the hills. During that Sunday there was much coming and going as two men, neither of them Widen employees, made a round of visits among these isolated homes. One they called on was Waggoner, the newly created officer of the league. A dark, deliberate, strongly built man in his late twenties, he possesses an excellent local reputation for veracity.

Concerning this visit, he says, "They said they were working for the UMW, and showed me a letter. It was signed by Bill Blizzard. In this letter, Blizzard says he does not want to be identified with the strike at Widen just yet, but that he has asked John L. Lewis to send out an organizer from the international union, and that Lewis is going to send Ed Heckelbech.

"So I asked them why they came to me. They said, 'We want you to help get the men out.' I told them I didn't want to get the men out. Then they said, 'Blizzard has got \$200,000 to spend on this, and it's a chance to make some money.' I told them I didn't want that kind of money, and they went away."

The work week at Widen begins at eleven o'clock on Sunday night. That night, as the No. 1 shift reported, they found the wash house in an uproar, with many men around who were not scheduled to go to work at that time. In the center of the excitement was Zirkle, shouting, gesticulating, buttonholing men individually and in small clots.

"We've been double-crossed!" he shouted. "Bradley and Facemire have put a dirty deal over on us. . . . We've got to have the UMW to get our rights!" and so on and on. At a given point in the turmoil Zirkle called for a strike, and was followed out of the building by about half the men there, including many who apparently had no other reason for being present at the time.

On this occasion Zirkle wasted no time in oratory. Instead, he promptly organized a picket line and flung it around the wash house. Next he set in motion a torchlight motorcade. Amid a din of blaring horns and shouting men, it wound back and forth through the town's streets, creating a condition of noise, confusion and fear such as Widen had never before known. This was the strike.

For a week Zirkle and his followers kept Widen in pandemonium. The company could not determine how many of its men actually considered themselves on strike and how many simply were not reporting because of the ceaseless commotion. Appeals to the governor—Patteson at the time—and to the state police brought no relief, and Bradley had to recruit his own police force.

In order to lend credence to the Blizzard version of the Widen war, it has been necessary to depict this force, which came to be known by both sides as the company's "guards," as a murderous motley of imported, high-priced thugs and killers. Actually, it consisted of thirteen nonstriking employees who were sworn by the regularly elected sheriff of Clay County, in which Widen is located, as deputies. Their

pay was the same hourly rate they would have received as miners, with, of course, overtime added. The one "outsider" involved was a trained police executive whom Bradley hired to supervise this force. He was Charles W. Ray, who had previously been both the superintendent of West Virginia state police, and Charleston's police chief.

By the end of the first wild week the guards, who wore sidearms and sometimes carried rifles as well, had forced the picket line out of Widen. With Zirkle still in command, it re-formed about a mile north of the town where the only automobile road into Widen branched off a state highway. With Widen quieted, the company took stock. It was at once apparent that out of 731 employees, 490 were available for work. This meant that 241—not the 400 men Blizzard claimed—were on strike, and already a few of these were beginning to come back.

Some of the strikers were younger men, impatient with the oldsters who outnumbered them. Some were men the company would have been content to lose at any time under other circumstances. These were the grumblers, malcontents, troublemakers and careless workers who could not have stayed on the payroll as long as they had if the company had pursued a more ruthless labor policy. And some were just plain confused. One youngster, a war veteran, when asked how the strike had come about, gave this astonishing answer, "I don't know. I just saw there was a picket line and it seemed to me my place was with them."

Among the strikers, there were also a few simple-minded gullibles, like the old man who had only two more years of work to gain a pension. He struck, he said, "'cause I ain't gonna go on paying fifty cents a month to that no-'count league." Since the rules of pension eligibility require twenty full years of service, of which he already had eighteen, he

had thrown away the prospect of \$1200 a year for life to save twelve dollars.

Finding that nearly 500 of its workmen were still available, the company, which had remained completely shut down during the first week, resumed limited operations. Resumption brought two, possibly unrelated, developments. Ed Heckelbech, the organizer from the UMW's international who had been mentioned in the letter Waggoner saw, turned up on the picket line. And the violence began.

Zirkle's pickets, commanding the only road into Widen, were strategically placed to cut off all the nonstrikers who lived outside the town. Oddly, their first victim was Dennis Gray, who had served with Zirkle on the young insurgents' committee of seven and who, like Waggoner and all the others on it except Zirkle, had refused to heed the call-out. When Gray turned his car off the highway onto the Widen road, he found a wall of men standing in his path. Rather than run them down, he stopped. Zirkle pushed a piece of paper with some printing on it in front of Gray's face.

"Sign this," he ordered, "and join the UMW."

"Go to hell," Gray replied.

At which a dozen or more strong arms grabbed Gray's car by its skirts, grunted, heaved and flipped it on its side. As Gray pushed his car door upward and climbed out, someone brought a four-foot wooden club crashing down on his head. Gray was too scared to drop. Propelled by mortal fear, he ran for the safety of the nearby woods.

Before that day ended, one other car was overturned, three more battered by flying rocks and a sixth punctured by bullets. More calls for police protection resulted in a pair of state troopers paying a quick visit. They drove down the road, stopped at the picket line for a while, and drove on, reporting that there was "no disturbance." Meanwhile, the word got around and traffic into Widen ceased.

Next, the pickets turned their attention to the railroad. One train was boarded, the passengers forced off at gun point, and one beaten very badly. Thereafter the trains ran under armed guard.

On October sixth, company lawyers obtained an injunction against the pickets in the Clay County Circuit Court. Later, Zirkle swore he had resigned the strike leadership two hours before the injunction was issued.

Heckelbech, however, was present when copies of the injunction were served on the pickets. Seizing one and waving it aloft, he made the impassioned speech, the burden of which was, "Pay no attention to it. It isn't worth the paper it is written on." In a manner of speaking, he was right. Lacking effective enforcement, the injunction did nothing to stem the rising tide of violence.

But defiance was not Heckelbech's only weapon. At around noon, on October 6, 1952, Charles Ferguson, the acting director of the UMW's safety division, who happened at that moment to be staying in a suite in The Netherland Plaza hotel in Cincinnati, received the following telegram:

WOULD APPRECIATE ON THE DOUBLE LAST TWO FEDERAL MINE INSPECTION REPORTS OF ELK RIVER COAL AND MINING (SIC) COMPANY CLAY COUNTY WIDEN WEST VIRGINIA. APPROXIMATELY 650 EMPLOYEES HIGHLY MECHANIZED NONUNION MINE ON STRIKE FOR RECOGNITION. MINE 48 YEARS WITHOUT UNION. ANY OTHER ASSISTANCE WOULD BE MOST HELPFUL. THE IMMEDIATE VISIT OF AN INSPECTOR WOULD EXCITE COMPANY.

This telegram bore, as the sender's name: "Ed Heckelbech, International Representative, P. O. Box 1313, Charleston, W. Va."

In checking out of the hotel, Ferguson left this telegram behind, and the next tenant of his suite mailed it to Bradley. Sure enough, a day or so later an inspector from the United States Bureau of Mines showed up in Widen. "I don't know what's biting those fellows in Washington," he said, "but I've got orders to look this mine over, even though they know I was here only two months ago."

His visit produced nothing to excite the company. Bradley had been a pioneer in promoting safety rules and devices, and among mining men his operation is famous as one of the safest anywhere. But it did bring to Bradley a sobering realization that the power behind that illegal picket line at the head of the road could not only deprive him of police protection to which he was entitled from his state but could also threaten him with an arm of the Federal Government.

Now the assault on Widen was stepped up in fury and diversity. From the surrounding hilltops, rifle bullets came whining into switch houses which controlled electric circuits into the mines, and drift mouths where guards were posted to prevent the entry of possible saboteurs. Other rifle bullets were used to cut power lines supplying the town. Telephone posts were uprooted and a quarter mile of line cut into short pieces. Finally, on October twenty-third, two railroad bridges were blown up, effectively isolating the town. Since coal could not be hauled out, the mine closed down. Since food could not be hauled in, more than 1200 people began to learn, for the first time, the meaning of hunger.

Harry L. Gandy, Bradley's assistant and operations boss, was convinced that the pickets hoped to starve Widen. He got out to Charleston, where he organized shipment of a daily carload of food. This car had to be unloaded at the first blown-out bridge by a human chain, like a bucket bri-

gade. Passing the car's contents from hand to hand, they loaded them into a railroad motor coach that, luckily, had been left in operable condition between the two blasted bridges. At the next destroyed bridge the same operation had to be repeated before the daily shipment finished its journey into Widen. At both transfer points men prudently worked under the protective rifles of company guards.

It was at this point that the attorney general of West Virginia, with the apparent concurrence of the governor, delivered himself of the opinion that since all the shooting and blasting at Widen was taking place on private property, there was nothing the state could do about it. In a seething rejoinder, the Charleston Daily Mail ran a front-page editorial, captioned: HAVE A CARE; MAKE CERTAIN YOU'RE MURDERED IN PUBLIC.

Election Day brought a demonstration of what Governor Patteson might have done at any time he chose. In response to a plea from Widen citizens, he sent this telegram:

HAVE GIVEN STATE POLICE DEFINITE INSTRUCTIONS TO KEEP ROAD OPEN SO THAT ALL CITIZENS WILL HAVE ACCESS TO AND FROM WIDEN IN ORDER THAT THEY MAY BE ABLE TO CAST THEIR VOTES ON ELECTION DAY.

And it worked! For one day the people of Widen came and went as freely as they ever had.

But next day the line closed again, and the pickets resumed their viciously exuberant exercise of "putting the rocks" to cars attempting to come and go. And this went on until November twentieth, when, as suddenly and dramatically as on Election Day, the pickets spread apart and Widen once again became freely accessible.

Several state troopers have since said that this second opening was due to an order from Governor Patteson, and

Apr 25

one went so far as to describe the order as a "proclamation." No such proclamation, however, exists in the state archives, nor was it noted in the local newspapers. But for some days before the order, what the papers had been carrying—and in big, black, Page 1 headlines—was the news that a ten-man team of FBI agents had rented headquarters in Clay County to carry on an intensive investigation of the Widen affair.

Under civil-rights statutes dating back to Reconstruction days, and reaffirmed in the Taft-Hartley Act, it is a Federal offense to hinder any person from the peaceful pursuit of his work. Although the FBI men did inquire into the dynamitings and other violence, their primary target was to determine whether the pickets had violated the civil-rights statutes, and to what extent. With stenographers recording questions and answers, they examined every person on the picket line, and many a picket, after his interrogation was finished, went back to the line with a quietly ominous FBI warning ringing in his ears. "I would advise you," the agents counseled, "to get a lawyer."

In Charleston, Governor Patteson now realized the Widen strike had become a very hot potato. His first reaction was a statement to the newspapers in which he blamed everything on his superintendent of state police, W. E. Burchett. Next, he ordered an inquiry and, inconsistently, appointed Burchett, together with the state Commissioner of Labor, and the state's Attorney General to conduct it. He also asked Bradley and Blizzard to sit as ex-officio members. Bradley disqualified himself because of his connection with the events to be scrutinized, as did Burchett. Blizzard refused to follow suit, and Patteson allowed him to remain. Because of Blizzard's continued presence, Bradley's entire side—his attorneys, executives, nonstriking employees and their families—boycotted the hearing.

It thus became a one-sided affair wherein the witnesses attempted to justify the strike by damning Bradley, and to whitewash the state administration as well as the police by blaming the violence on the company. The statements of the police set the tone. One of them said that he, himself, had been stopped on an occasion when the pickets had picked up the rear end of his car, but he had done nothing about it. Others said that although they had been on the scene virtually around the clock during a period when no less than fifty-eight instances of violent actions were reported, they had seen no violence. All of them said they had seen strikers stop cars and turn them around but it had all been done in a very courteous way. And all of them agreed with one trooper who said, "I have been in a lot of strikes, and this is the quietest picket line I have ever seen."

Filled, largely, with this sort of thing, the inquiry report runs to 184 printed pages. In West Virginia it has become the bible of the pro-UMW forces. Both Blizzard and Governor Marland recommended it to this reporter as the one place to learn the truth about the Widen situation. Considered in the light of these recommendations, it is, indeed, a most extraordinary document.

With the advent of the FBI, terror at the road head ceased, but its spread in the surrounding countryside continued unabated. Barns were burned; homes, automobiles and one railroad culvert blown up; men and cars shot at; and one man's private lane was land-mined.

During the winter, the number of men on the picket line dwindled steadily, as, one by one, the strikers came down to ask for their jobs back. But the company refused to accept any man until he had been approved by a committee of his fellow workers, and this committee blackballed every striker who could be personally linked to any violent act. In

an area where everybody is kin to almost everybody else, it is not hard to remember who threw the rocks or to find out where the dynamite was hidden and who had been seen around the cache. Nonstriking employees might not tell company officials or investigators what they had seen or heard, but they would not hesitate to act on it to keep an unwanted man, even if he happened to be a relative, off the job. As a result, many strikers were refused re-employment, and went outside to other work. By spring the body of strikers still on the picket line had been chipped back to its hard core of bitter irreconcilables, numbering not more than fifty men.

From the start of the trouble, the company had constantly admonished its people to avoid any action that might be construed as provocation. By May, however, the men had grown tired of turning the other cheek, and, without company knowledge, a group of them took a bulldozer up to the head of the Widen road. Just off the state highway, in the middle of the company road, the pickets had set up a sort of field station. It consisted of benches and old automobile seats ringed around a cluster of fifty-gallon drums called "fire barrels" because the pickets built fires in them for warmth. As pickets scattered right and left to safety, the bulldozer tracked into this setup, pushing barrels, benches, lunch boxes and accumulated trash across the road and over the lip of a deep gully.

Two nights later the retaliation of the pickets was murderous. For a long time the miners who lived outside the town had gone to and from work in motorcades, which they called convoys. In this fashion they could breach the picket line in the safety of numbers. The pickets, meanwhile, had taken over a commercial garage down the road as a cook-shack and headquarters. In the early morning of May sev-

enth—1953 now—as a convoy passed, there was a blaze of rifle and shotgun fire from the cookshack. The lead car, driven by a miner named Charles Frame, plowed into a gully, with Frame dead at the steering wheel, a bullet having gone through his skull.

Possibly because Frame had the luck to be killed on a public road, state police acted with decision and efficiency. Arresting everyone they found in and around the cookshack, they hauled fifty-two persons, including one woman and two small boys, off to the county jail at Clay. A blistering protest came from Blizzard about dirty, overcrowded jail conditions. For once, he was ignored. Pointing to the laws which make all parties to a conspiracy equally guilty, C. P. Taylor, a state-police major, bluntly announced, "If the men who did it won't daddy (own up to) the shooting, they'll *a!!* daddy it." And from the cookshack itself and from cars and trucks around it the police confiscated a twenty-gun arsenal.

Eventually, all were released except three men, who were indicted. The first to be tried was a young miner named Jennings Roscoe Bail. Although the trial lasted longer than any in Clay County history, the elements of proof were short and simple. It was proved that Frame was killed by a .35-caliber steel-jacketed rifle bullet. State police testified that of the twenty weapons confiscated, the only one from which such a bullet could have been fired had been claimed by Bail. In his own behalf, Bail testified he had fired four or five times at the convoy. But, he said, he opened fire only after the company guards in the convoy fired on the cookshack. The jury was taken to the shack and shown many bullet marks on its walls. Whereupon three top officials of the state police testified that they had examined those walls the morning after the shooting, and that the bullet marks the jurors saw had not been present.

The jury thereupon found Bail guilty of second degree murder, and he was sentenced to five years' imprisonment. The UMW lawyers who defended him have, however, appealed the conviction, and the prospect is that for many months to come his case will remain on the dockets of the higher state courts.

Largely as a result of evidence gathered by the company's own investigators the 1953 October term of the Clay County grand jury handed up a series of indictments. In these, eleven strikers were charged with holding up the railroad train; the Frame murder case was reopened and Dennis Zirkle was added to the two other, previously indicted, defendants still awaiting trial; four other men were charged with stealing, from the State Road Commission, the dynamite used to blow up the railroad bridges; and finally, one man was charged with perjury as a result of his testimony in the trial of Bail. Of these, only one case has come to trial. It involved the railroad holdup and resulted in a hung jury, which, reportedly, stood eleven to one for conviction.

In November, 1953, the evidence gathered by the FBI was finally laid before a Federal grand jury in Huntington, West Virginia, which handed up an indictment charging a conspiracy to violate civil rights against thirty-seven persons, including the UMW's international representative, Ed Heckelbech.

The inclusion of Heckelbech among the defendants necessarily means that, in the view of the Government attorneys and the grand jurors, the United Mine Workers of America is a part of the conspiracy. And this, in turn, means that Lewis and Blizzard will be almost as deeply involved as if they had been among the indicted.

The United States Department of Justice regards the indictment as the most important attempt to deal with labor

violence under civil-rights statutes yet made, and attorneys for both the Government and the UMW are determined to carry it to the United States Supreme Court. If they do, it will take months, even years, to reach a final decision. By this judicial process, regardless of how the verdict falls, Widen's reign of terror may be transmuted into one of the more significant chapters on civil rights in United States history.

